

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 142
)	
and)	
)	Award No. 142
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
NORFOLK & WESTERN RAILWAY COMPANY))	

Richard K. Hanft, Chairman and Neutral Member
Adam Lively, Carrier Member
Adam Gilmour, Organization Member

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The discipline [thirty (30) day actual suspension] imposed upon Mr. T. Billetdeaux, by letter dated June 26, 2020, for alleged improper performance of duty on June 1, 2020, in connection with his alleged failure to ensure that the driver’s side front wheel well was clear of a concrete bollard as the vehicle was making a reverse move was arbitrary, capricious and constituted a violation of the Agreement (Carrier’s File MW-PITT-20-35-LM-508 NWR).
2. As a consequence of the violation referred to in Part (1) above, Claimant T. Billetdeaux shall now be made whole for all straight time and overtime compensation lost from June 1, 2020 to when the Claimant was reinstated for service on July 1, 2020. Also, the Carrier must exonerate the Claimant of the charges levied against him and to ensure his seniority rights remain intact and his benefits unimpaired.”

FINDINGS:

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

After thoroughly reviewing and considering the record and the parties’ presentations. The Board finds that the claim should be disposed of as follows:

It is undisputed that on June 1, 2020 Claimant was assisting an Assistant Foreman lining switches for a planned equipment movement for the tie-patch gang. After lining the switches, the Assistant Foreman re-briefed the gang about the planned movement and Claimant, who had been a passenger in the Carrier’s pickup truck and the Assistant Foreman, the driver of the pickup truck, agreed they would make a reverse movement with the pickup truck to turn it around.

Claimant positioned himself behind the pickup truck to act as a lookout during the reverse movement in accordance with Carrier’s Engineering Standard Procedure 160 that requires, in relevant part that “...Any time a second person is available for any vehicle type, they will exit the vehicle and physically direct and protect the back-up move. Every occupant is responsible for its safe operation, not just the driver...”

As the pickup truck was being backed through the fuel pad behind the office, the driver turned the front wheels of the truck to the right causing the left front wheel well of the vehicle to strike a bollard protruding from the ground. The fender-bender was reported, and management investigated the incident. The driver of the truck signed a waiver and accepted responsibility for the incident and was disciplined with a five-day deferred suspension. The Claimant refused to accept responsibility and was assessed a thirty-day actual suspension.

The Organization argues that the Carrier has failed to prove that Claimant failed in any way to carry out his responsibilities. Claimant was positioned behind the truck for the backing movement and had no way of knowing that the driver of the truck was going to turn the wheels. The Organization further asserts that the driver of the truck, who obviously had primary responsibility for looking where he was going as he operated the vehicle was responsible for the front of the vehicle. Thus, the Organization reasons, the quantum of discipline imposed was neither appropriate nor proper because the Claimant's role in this incident was minor and secondary to that of the driver who was operating the vehicle and who independently made the decision to turn the wheel.

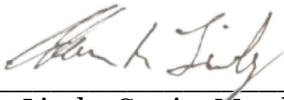
The Board agrees that Claimant was no more responsible for the accident than was the driver of the vehicle but was disproportionately disciplined. The Board therefore orders that the discipline imposed on the property shall be reduced to a five-day deferred suspension, with the understanding that the discipline shall remain on Claimant's Career Service Record.

Award:

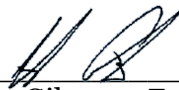
Claim sustained in accordance with the findings. The Carrier is directed to comply with the Award on or before thirty (30) days following the Award date below.



Richard K. Hanft, Chairman



Adam Lively, Carrier Member



Adam Gilmour, Employee Member

Dated at Chicago, Illinois, December 3, 2024.