

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
DIVISION – IBT RAIL CONFERENCE	)	Case No. 143
	)	
and	)	
	)	Award No. 143
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER	)	
NORFOLK & WESTERN RAILWAY COMPANY)	)	

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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-five (35) day actual suspension] imposed upon Mr. M. Eisenhower, by letter dated May 22, 2020, for alleged violation of Operating Rule 2(b) in that he was observed by Supervisor of Track Inspection (STI) J. Doney sitting in a Company Hyrail Pickup Truck in a slouched position with eyes covered at approximately 10:20 A.M. on April 16, 2020 at Mile Post BR 231.8 and conduct unbecoming an employee in that he made inappropriate, discourteous and unprofessional comments to STI J. Doney on April 16, 2020 was arbitrary and capricious (Carrier’s File MW-HARR-20-36-LM-362 NWR).

2. As a consequence of the violation referred to in Part (1) above, Claimant M. Eisenhower shall be fully compensated and made whole, with all charges being stricken from his record.”

FINDINGS:

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employee 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:

On April 10, 2020 Claimant, a Track Patrol Foreman, was assigned to go on an FRA Patrol with the Supervisor of Track Inspections (“STI”), the Charging Officer in this matter.

The STI issued Claimant a printed “to-do” list of work to be accomplished that included grinding frogs at Wenger Feeds, Choice Fuels and CP Bud and trimming/removing trees in the foul or near the foul of the track. The patrol began at 8:03 a.m. and by 10:20 a.m. the STI and Claimant arrived at the frog at Wenger Feeds. The STI testified at the Investigation on the property that she pulled the truck past the frog and put it in park. The STI further testified that she looked over and observed Claimant with head tipped back to the left, mouth open, hands in pockets and eyes covered with dark glasses, not moving. The STI recalled that she told Claimant “we are going to get out and grind this frog” which he did.

Having made the observation of the Claimant in a slouched position with eyes covered, while Claimant was grinding the frog, the STI called her supervisor to receive instructions on how to proceed in charging the Claimant with violation of Operating Rule 2b. The supervisor informed her that he would get right back to her.

The work on the frog at Wenger feeds was completed at 10:44 a.m. and the patrol continued. The STI's supervisor contacted her at 10:59 a.m. and informed her that Claimant would be removed from service pending an investigation. At 12:09 p.m. the STI set off the rail and she and the Claimant returned to the office where she informed him that he was being taken out of service for violation of Operating Rule 2b. The STI would give Claimant no further information.

The Claimant is alleged to have, at that point, made the comments that "this is Bullshit" and "I'll work at my own f\*cking pace."

An Investigation was held on the property and the Claimant was found guilty of violation of Operating Rule 2b and conduct unbecoming an employee in that he made inappropriate, discourteous and unprofessional comments to the STI on April 16, 2020. Claimant was assessed a thirty-five-day actual suspension for his violation of the rules.

The Board finds that the discipline issued in this matter was excessive given the particular factors involved and orders that the discipline be reduced to a 15-day actual suspension.

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.