

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 144
)	
and)	
)	Award No. 144
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
NORFOLK & WESTERN RAILWAY COMPANY))	

Richard K. Hanft, Chairman and Neutral Member
Scott M. Goodspeed, Carrier Member
Adam N. Gilmour, Organization Member

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

1. The Carrier’s discipline (dismissal) of Mr. J. Tucker, by letter dated June 13, 2022, in connection with his alleged: (1) improper performance of duty and conduct unbecoming in that while operating a Chevy Silverado 2500 (217660) on February 8, 2022, at approximately 11:11 A.M. in Ironton, OH, at the intersection of South 3rd Street and Quincy Street, he was involved in an accident and then fled the scene immediately afterwards, then allegedly failing to inform his supervisor of the accident and any damage that occurred to either the company or private vehicle(s) involved; and (2) conduct unbecoming an employee in that on February 17, 2022, he provided false and/or conflicting statements to Track Supervisor A. Feucht, Engineer of Track T. Burchfield, Norfolk Southern Special Agent B. Clagg and Norfolk Southern Claims Agent K. Smith about being involved in a vehicle accident on February 8, 2022, was capricious, excessive, harsh and unwarranted (Carrier’s File MW-FTW-22-59-LM-125 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Tucker shall now be reinstated and be cleared of the unsubstantiated charges with all rights, privileges and back pay.”

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:

Claimant in this matter had 17 years' service with the Carrier at the time of the events giving rise to this dispute and was working as a Flagging Foreman at the time of the incident. On February 7 and 8, 2022 Claimant was assigned flagging duties in Lawrence and was assigned Carrier's truck No. 217660 to perform his duties. Claimant testified that sometimes he would drive to Ironton, Ohio to use the restroom.

On February 8, 2022, a motor vehicle collision occurred in Ironton, Ohio. A Chevrolet Silverado ("Veh. 2") was rear-ended by another truck ("Veh. 1") at the intersection of South Third Street and Quincy Street in Ironton. The driver of Veh. 1 told the driver of Veh. 2, a seventy-six (76) year old man, to pull to the curb to assess the damage. When the driver of Veh. 2 did so, the driver of Veh. 1 fled the scene and crossed a bridge into Kentucky.

On the following day, February 9, 2022, the driver of Veh. 1 went to the Ironton Police Department and reported the accident. The accident report in the narrative section provides:

"Unit 1 was traveling northbound on south 3 street. Unit 2 was stopped at the red light on South 3rd Street and Quincy Street. Unit 1 struck Unit 2 in the rear of the vehicle. Both drivers agreed to move off the side of the roadway so they could safely discuss the incident. Unit 1 then proceeded to drive away from the crash and flea (sic) across the bridge into Kentucky. The driver of unit 2 stated that the truck that hit him was an N&W Railroad Company truck, Truck No. 217660."

In a separate witness statement, the witness, the driver of vehicle 2 stated that the vehicle that hit his truck had RR wheels on front.

Carrier contends that Truck No. 217660, driven by Claimant on February 8, 2022, was involved in a collision at the intersection of South Third Street and Quincy Street at 11:11 a.m. on that day and that Claimant thereafter fled the scene. The Company's belief is based on the report of a Company Claims Agent and a Norfolk Southern ("NS") police officer reporting to Carrier officials in Claimant's chain of command on February 17, 2022.

The Claims Agent and NS Police Officer shared telemetric data with Carrier officers that showed Truck No. 217660's location and speed during a one-hour window on February 8, 2022. The data showed the truck traveling at 9 mph at 11:11:02 a.m. and 0 mph one second later at 11:11:03. The truck's precise location at 11:11:03 was 904 Third Street in Ironton, Ohio, the exact location of the reported hit-and-run collision.

The Charging Officer testified that Claimant was contacted by the Claims Agent and Police officer and denied any knowledge of or involvement in the collision.

Based on the above information the Charging Officer accuses Claimant of improper performance of duty for being involved in a hit and run collision and failing to inform his supervisor of the accident and any damage that occurred to either the company vehicle or privately owned vehicle(s) involved.

The Charging Officer further testified that Claimant denied any knowledge of any involvement in an accident when he was questioned while flagging at CP Lawrence on the same job by him, the Charging Officer, and the Engineer of Track.

Claimant was charged with Conduct unbecoming an Employee because it is alleged that he provided false or conflicting statements to the Track Supervisor and the Engineer of Track on February 17, 2022 when questioned about being involved in a vehicle accident on February 8, 2022. Claimant, the Charging Officer testified at the investigation denied any knowledge of or involvement in the collision.

The Board has carefully reviewed the record developed on the property concerning this matter. The biggest problem for the Carrier in proving its charges against the Claimant by substantial evidence is that while Carrier relied on telemetric reports of Vehicle #217660's speed and location between 11:00 and Noon on February 8, 2022 showing a harsh braking incident at 11:11:02, the official Police Traffic Crash Report submitted to the record shows a Crash Reported date/time of 2/9/2022 @13:12; Dispatch date/time of 2/9/2022 @ 13:12; Arrival date/time of 2/9/2022 @ 13:15; Scene Cleared date/time of 2/9/2022 @13:35. The Organization asserts that nothing happened involving carrier's vehicle happened on February 8, 2022 other than a harsh Braking at 11:11 on February 8, 2022 and there is no evidence that a collision occurred at that time and place. Instead, the Organization avers, the private citizen was involved in a collision with a N&W Railroad Company truck on February 9, 2022 and there is no evidence to show Claimant was anywhere near that location on February 9, 2022 at 1:00 p.m.

Moreover, the private driver's statement attached to the official Traffic Crash Report states unequivocally that the accident occurred on February 9, 2022, and again, there is no evidence that Claimant was anywhere near the scene of the accident.

For the above reasons, the Organization opines, the Carrier has failed to meet its burden of proof that Claimant was involved in a traffic accident on February 9, 2022 involving the Company truck he was assigned on that date and further the additional charge of giving false statements to his supervisors must fall away if there was no traffic accident involving the Claimant on February 9, 2022 because his statement that he was not involved in or have knowledge of a traffic accident occurring on February 9, 2022 would have then been a truthful statement.


The Board is persuaded by the evidence and testimony on this record that a minor collision involving Carrier's Truck No. 217660 did occur on February 8, 2022 at 11:11 a.m., that Claimant was driving that truck at that time, fled the scene and failed to report the incident to proper authority. It appears to the Board that the fact that the Traffic Crash Report shows dates and times on February 9, 2022 is attributable to the fact that that is the date and time that the crash was reported, when an Officer was dispatched to take the report, when that Officer arrived at the PD to take the report and when the scene was cleared upon completion of the report.

The Board finds that the Claimant's involvement in this minor collision and failure to report the same and even denial of any involvement or knowledge of the incident was proven by substantial evidence.

In view of the Claimant's long tenure as a foreman with no disciplinary problems for almost ten (10) years and a lack of any previous dishonesty with the Carrier, the Board finds the discipline assessed in this matter, given the particular circumstances, was excessive. The Board orders that Claimant be returned to his previous position without compensation for time out of service, said remedy to be implemented within thirty (30) days from issuance of this Award.

Award:

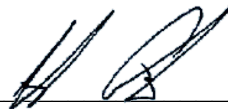
Claim sustained in accordance with the findings.



Richard K. Hanft, Chairman



Scott M. Goodspeed, Carrier Member



Adam N. Gilmour, Employee Member

Dated at Chicago, Illinois, February 1, 2024.