

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 148
)	
and)	
)	Award No. 148
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 Carrier’s discipline (dismissal) of Mr. D. Rambo, by letter dated April 26, 2022, in connection with his alleged (1.) improper performance of duty in that while working as a foreman and the Roadway Worker in Charge (RWIC) of Smoothing Gang SM-50, he failed to properly establish track protection and/or ensure that the proper working limits were being used prior to entering and occupying the block between CP White and CP Day on Main Track 1 for approximately thirty (30) minutes, between 11:13 A.M. and 11:43 A.M., resulting in him and the members of his work group being on-track without protection, resulting in an unsafe condition and (2.) improper performance of duty in connection with the above charge in that he failed to conduct a proper job briefing, to include the correct working limits, prior to him and the members of his work group entering and occupying the block between CP White and CP Day on Main Track 1, was capricious, excessive, harsh and unwarranted (Carrier’s File MW-FTW-22-78-LM-152 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Rambo shall now be reinstated back to service effective immediately, that he be fully made whole for any lost wages, per diems, holiday pay, all credits for his vacation and all other benefits.”

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:

The Claimant in this matter was the Foreman and Roadworker In Charge (“RWIC”) on March 17, 2020 as he and two (2) Machine Operators from his gang were tramming equipment from Danville to Lynchburg in Virginia. Claimant undisputedly had Track Authority #7097 between Checkpoints Fall and White.

The record reveals that the Claimant instructed the two machine operators to move through Checkpoint White into a block between Checkpoints White and Day out of the way of an oncoming southbound train, NS 352.

The Carrier contends that the group did not have Track Authority for the block from White to Day. Although the Carrier concedes that Claimant requested a Track Authority through the Track Authority application on the Carrier's phone, the Dispatcher, the Carrier contends, never approved it.

Hence, the Carrier avers, Claimant and his two co-workers were on track that they had no track authority to occupy for twenty (20) minutes and further that Claimant failed to give a job briefing prior to proceeding beyond CP White regarding the extent of their working limits and/or following the "Double Copy" process to ensure track protection was properly established.

The Claimant's written statement provides the following: that Claimant obtained a track Authority for White to Fall and told the rest of his group that he would stop at White to give out two track authorities: White to Day and a Joint Occupancy Day to Elba. The Claimant made the decision due to an oncoming train to move the gang North of CP White to clear the track for the approaching train. The Gang proceeded 300' North of White.

Claimant recounted that he sent the Track Authority for the single track back, acknowledged the void for Fall to White, then proceeded to back up in the mobile application to get a Track Authority from White to Day. The Claimant related that once he got back to the Track Authorities that were active, the application only showed the Joint Occupancy active with nothing pending and with nothing active for White to Day. Claimant recalled that he logged out, signed back in and the Track Authority showed "pending" again. Claimant submits that he then refreshed the screen for it to disappear again. The Claimant asserts that after trying to refresh numerous times, he logged back in again to sign back on to see if the request came back "pending" again. Claimant related that he panicked at that time and called the dispatcher to inform her that his Track Authority was not showing "Active". The Claimant reported that the dispatcher told him that she hadn't sent a response to his request for Track Authority back yet. Claimant related that after a period of a couple of minutes, the Track Authority showed up on his phone as active. Thereafter, Claimant and his gang returned to work, but were then notified to go to the hole at Gretna where the Division Engineer and Engineer of Track met them and took them out of service.

While the Claimant himself admitted that this track time violation was a very serious and potentially lethal mistake, the Board, in consideration of Claimant's past service record has determined that reinstating Claimant without compensation for time out of service to be commensurate with the violations proven based on the unique facts in this case.

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.