

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 149
)	
and)	
)	Award No. 149
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. B. Carte, by letter dated January 10, 2023, in connection with his alleged conduct unbecoming an employee in that on August 20, 2022, supervision discovered that he made inappropriate, violent and/or threatening remarks directed at other employee(s) on or about August 18, 2022, was capricious, excessive, harsh and unwarranted (Carrier’s File MW-BLUE-22-30-SG-571 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Carte shall now be reinstated to service and be cleared of the charges, with all rights and back pay restored.”

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:

This record reveals that on Thursday, August 10, 2022, the Claimant was working on the R-8 Gang as a Rail Anchor Tamper Machine Operator. On the way back to the hotel after completion of the gang’s workweek, Claimant was alleged to have made comments in the van that made his co-workers feel threatened and uneasy.

On Saturday, August 20, 2022 the gang’s Supervisor received a text message from one of the Claimant’s co-workers warning: ‘You guys better be vigilant about Ben, he’s losing his mind. When he brings a gun into work one day, don’t say I didn’t tell anyone to address the situation and get him help.’”

Claimant’s supervisor took this communication seriously and called some of the others who had been in the van with Claimant that afternoon and discussed the situation with them. Three other employees on that gang that had been in the van on August 18, 2022 agreed that things were said that were concerning and made them feel uneasy and all expressed the need to get Claimant some help.

The Claimant's supervisor testified that after talking with Claimant's co-workers he contacted a higher-level manager to discuss the situation. On Sunday morning, August 21, 2022, Claimant's supervisor called him on the telephone and advised him that he was being taken out of service.

Claimant was summoned to an Investigation held on the property concerning his conduct unbecoming an employee on December 21, 2022. Based on the evidence adduced at that investigation, by letter dated January 10, 2023 Claimant was advised that he was dismissed from service.


The Board has reviewed the full record of this case developed on the property as well as the transcript of the investigation and the parties' arguments set forth in their submissions at arbitration. We find the Organization's procedural arguments to be without merit and that the Claimant was afforded all due process right guaranteed by the parties' Agreement.

Turning to the merits of the case, the Board finds that the Carrier's determination that Claimant was guilty of the charges brought against him is supported by substantial evidence. All four passengers that rode in the van with the Claimant on that afternoon submitted written statements attesting that he made disturbing comments.

With regard to the quantum of discipline assessed, the Board finds that given the particular facts in this matter that dismissal was excessive. All of Claimant's co-workers that submitted written statements expressed the need to get their co-worker help. Instead, Carrier determined to dismiss him. Evidence on this record shows that Claimant has taken it upon himself to seek the help that he needed. Claimant will therefore be returned to service, without compensation for time out of service, subject to evaluation and approval of Carrier's Medical Services.

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.