

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
DIVISION – IBT RAIL CONFERENCE	)	Case No. 150
	)	
and	)	
	)	Award No. 150
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. R. Shelby, by letter dated May 3, 2023, in connection with his alleged conduct unbecoming an employee in that on March 22, 2023, while on duty in Elkhart Indiana, he used derogatory, threatening and unprofessional language directed at a Company officer, was capricious, excessive, harsh and unwarranted (Carrier’s File MW-DEAR-23-37-LM-189 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Shelby 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:

Claimant entered the Carrier’s service on January 3, 2009. On March 22, 2023 he was assigned as a Tamper Operator. The record reflects that on that day Claimant entered the conference room in Elkhart, Indiana after the morning meeting and proceeded to curse and threaten the Northern Regional Director of Engineering. Another employee stepped in front of the Claimant when he tried to start a physical altercation. The other employee eventually got Claimant out of the meeting room. Claimant used heavy profanity and threatened the Director of Engineering. The Charging Officer as well as several other supervisors attempted to deescalate the situation to no avail. The Director of Engineering did not say anything to trigger the Claimant. Claimant was immediately taken out of service pending investigation.

Claimant was summoned to a formal investigation by letter dated March 29, 2023 that was held April 18, 2023. Based on the evidence adduced at the formal investigation, by letter dated May 3, 2023, Claimant was notified that he was dismissed from service of the Norfolk Southern Corporation and its affiliates. The Organization progressed an appeal of this discipline and the parties handled this dispute in the usual manner and in accordance with the Agreement

without, however, being able to resolve matters on the property. The parties properly placed this dispute before this Board for final and binding adjudication.

The Board has carefully reviewed the full record of this case as developed on the property as well as the transcript from the investigation. We have considered the parties' arguments as set forth in their submissions to the Board.

The Organization has raised several procedural objections including that Claimant was improperly held out of service, that the Hearing Officer failed to sustain objections concerning contradictory evidence, that there was no precise charge identified in Carrier's letter of charge and that Carrier failed to produce all witnesses with pertinent information and to develop all facts relevant to the incident under investigation. We find the Organization's procedural objections to be without merit.

Considering all of the probative proof on this record, the Board finds that the Carrier's determination that the Claimant was guilty of the charges is supported by substantial evidence. The Claimant testified that he stated that "If I ever catch you outside of work, I'm going to put my hands on you".

The Board, however, does not believe that here, the evidentiary record supports the quantum of discipline assessed. This is a fourteen-year employee with a minimal disciplinary record. The Board therefore orders that the Claimant be returned to service, without compensation for time out of service, and subject to evaluation and approval of Carrier's Medical Services with regard to Claimant's ability to control his temper. The Board believes that the time out of service should be sufficient to impress upon the Claimant that the Carrier will not tolerate acts or threats of violence in any form.

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.