

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 152
)	
and)	
)	Award No. 152
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. Kelley, by letter dated April 17, 2023, in connection with his alleged improper performance of duty in that on March 7, 2023, at approximately 9:00 A.M., while hi-railing in Material Handling Truck 320401, he failed to operate equipment safely and/or failed to stop within half the range of vision at the crossing at Antwerp Road, Mile Post D 131.6, resulting in damage to a private trailer and his material handling truck, was capricious, excessive, harsh and unwarranted (Carrier’s File MW-DEAR-23-32-LM-168 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Kelley shall now be made whole, restored with all rights, privileges and back pay and this incident be expunged 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 employe 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 thirty-five-years of tenure with the Carrier at the time of the incident giving rise to this dispute. On March 7, 2023 Claimant was assigned as a Material Handling Truck Operator and was the driver of a material handling truck hi-railing to perform an FRA inspection. He was accompanied by the Supervisor of Track Inspection (“STI”) who was riding in the passenger seat of the truck.

The record reflects that as the material handling truck approached a highway grade crossing at Antwerp Road, Mile post D 131.6, Claimant looked to the left and observed a truck stopped at the crossing. As the Claimant began to proceed through the crossing at 20 – 25 miles per hour, the STI yelled out a warning to stop as a truck on the right-hand side of the material handling truck entered the highway grade crossing despite the fact that the flashing crossing lights were activated at the crossing. The material handling truck struck the trailer being towed by the private citizen causing damage to that trailer and the material handling truck.

Claimant was removed from service and thereafter summoned to a formal investigation on March 29, 2023. Claimant was charged with violation of Carrier's Operating Rules 812 and 813. Claimant was advised by letter dated April 17, 2023 that as a result of the facts adduced at investigation he was dismissed from Carrier's service.

By letter dated April 25, 2023 the Organization appealed the Claimant's assessed dismissal and contended that the Carrier violated the procedural elements outlined in Rule 30 of the Agreement, failed to meet its burden of proof and that the discipline imposed was excessive and unwarranted. Thereafter, the claim progressed on-property in the customary manner, however, no accord could be reached and the claim now comes before this Board for final adjudication.

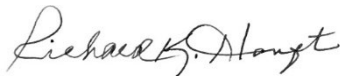
The Board has reviewed and given careful consideration to the transcript of the investigation as well as the full record developed on the property and the parties' arguments as set forth in their submissions at this arbitration. The Board finds that the Claimant was afforded all contractual due process rights under the parties' Agreement and that this matter is procedurally sound in all respects.

Turning to the merits in this dispute, the Board finds that the Carrier proved Claimant did violate Operating Rule 812 that requires "on track equipment approaching a highway grade crossing must be prepared to stop short and must not enter the crossing until the way is known to be clear". Claimant failed here to stop short of the crossing when the STI yelled out for him to stop and did enter the crossing without knowing the way was clear. That charge was supported by substantial evidence. With regard to violation of Operating Rule 812 that requires on-track equipment to be prepared to stop within one-half of the range of vision, the violation here was not proven by substantial evidence.

The Board finds also that there were mitigating facts involved here that cause us to find that the discipline of dismissal, given the particular facts involved in this case, was excessive. The Board therefore orders that the Claimant be restored to service without compensation for time out of service.

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.