

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
DIVISION – IBT RAIL CONFERENCE	)	Case No. 154
	)	
and	)	
	)	Award No. 154
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER	)	
NORFOLK & WESTERN RAILWAY COMPANY)	)	

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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 [ninety (90) day actual suspension] of Mr. T. Riddle, by letter dated December 23, 2019, in connection with his alleged conduct unbecoming an employee, in that he engaged in both a verbal and physical altercation with another employee at 1800 Round Street in Bethlehem, Pennsylvania on October 31, 2019, was capricious, excessive, harsh and unwarranted (Carrier’s File MW-HARR-19-122-SG-888 NWR).

2. As a consequence of the violation referred to in Part 1 above, Claimant T. Riddle shall now be cleared of the charges, be returned to service immediately and be made whole for all hours lost including all credits and benefits due”

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, at the time of the incident giving rise to this dispute, was a machine operator on the R-10 Rail Gang with approximately seven (7) years’ service with the Carrier.

On October 30, 2019, another employee on the gang, hereinafter referred to as “TM”, who was supposed to be clearing scrap from the track, as a prank, wrote Claimant’s name on several scrap rail anchors. He admitted that he wrote on one rail anchor “pick me up” and on another, the Claimant’s first name and placed them in the gauge of the rail. That evening in the Carrier-provided hotel some members of the gang, the Claimant not included, engaged in a group text conversation where other members of the gang were critical that if TM had time to prank, he had time to do the actual work. In response, TM made a rude and profanity-laden response and invited anyone who cared to continue the discussion to come to his hotel room, doubtfully for conciliatory conversation.

The next morning, the Claimant related at the investigation, he went to the Carrier's van to place his backpack therein and while doing so, TM appeared, placed his backpack in the van and slammed the van doors. At that point Claimant stated to TM "If you want to play games, we can play games" referring to TM's previous day's "prank". According to the Claimant, TM responded violently and invited Claimant to meet him after work off the property. The Claimant testified that he had both of his hands in his pockets and TM charged him. It is undisputed that at that point the men engaged in some "chest-bumping" but then disengaged.

TM alleges that during the pair's engagement, Claimant head-butted him and that he sustained a fractured nose as a result. Claimant denies that he head-butted TM. No evidence in the form of medical records was admitted to the record to prove TM's accusation.

Moreover, the supervisor of the R-10 Rail Gang testified that at no point during the day did TM complain about his nose being sore or appear to be affected.

Another employee who was a witness to the confrontation in the parking lot stated in his written statement that: "...I saw [TM] approach [Claimant]. [Claimant] kept his hands in his pockets. I only saw them bump chests. After they separated [TM] continued to tell [Claimant] to meet him off the property".

A second eye-witness employee provided a statement that said: "Prior to start time I observed [TM] and [Claimant] arguing in the parking lot. [Claimant] had his hands in his pockets and chest-bumped [TM] and both were shouting at each other. I did not witness [Claimant] head-butt [TM] Thursday morning 10/31/19".

On the next day of work, Monday, November 4, 2019, the supervisor of R-10 gang investigated the incident that occurred the preceding Thursday, October 31, 2019. As a result of his investigation, both TM and Claimant were held out of service.

By letter dated November 15, 2019 Claimant was summoned to a formal investigation held December 5, 2019. On December 23, 2019 Claimant was notified by letter that as a result of the evidence adduced at the investigation that he was being suspended ninety (90) days.

By letter dated January 21, 2020, the Organization appealed the Claimant's assessed discipline 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 carefully reviewed the transcript of the investigation and the full record of this case developed on the property. We have further carefully considered the parties' arguments as set forth in their respective submissions at arbitration. We find that the Organization's procedural objections are without merit and that Claimant was afforded all contractual due process guaranteed by the parties' Agreement and that this matter is procedurally sound in all respects.

With regard to the merits of this matter, the Board finds that the Carrier's determination that the Claimant engaged in both a verbal and a physical altercation on the morning of October 31, 2019 was supported by substantial evidence.

Turning to the quantum of discipline assessed in this matter, the Board determines that a ninety-day actual suspension was excessive given the probative evidence that TM was the aggressor in this dust-up and Claimant was merely reasonably reacting to TM's aggressive behavior. We therefore find that the discipline assessed on the property shall be reduced to a thirty (30) day's actual suspension.

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.