

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD No. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	Case No. 155
)	
and)	
)	Award No. 155
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 [twenty-two (22) day actual suspension] of Mr. D. Green, by letter dated April 1, 2021, in connection with his alleged (1) failure to properly perform his job duties when he allowed employee J. Cooper to operate support Vehicle #715649 at a rate of speed that did not permit him to stop within half the range of vision, resulting in the vehicle he was occupying to strike the parked Flashbutt Welding Truck, causing significant damage and (2) improper performance of duty, in that he failed to ensure that the hy-rail brakes on the vehicle he was occupying were properly adjusted, occurring at approximately 2:35 P.M. on February 17, 2021, while assigned as electric welder helper in the vicinity of Dalton, Missouri, was capricious, excessive, harsh and unwarranted (Carrier’s File MW-DECR-21-06-SG-150 NWR).

2. As a consequence of the violation referred to in Part 1 above, Claimant D. Green shall now be made whole and paid for the twenty-two (22) days of lost wages; be paid for the one (1) day that he was required to miss, by the Carrier, in order to attend this investigation, including all expenses that were incurred when attending the investigation; and include credit for the claimed days in regard to vacation qualification requirements and Railroad Retirement.”

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:

On February 17, 2021, Claimant was the passenger in a support vehicle that was the third vehicle in a three-piece consist tramping to a work location. Claimant had approximately twelve (12) years’ tenure with the Carrier and was assigned that day as an Electric Welder Helper.

The crew sat on at MP S180 and intended to tram East to work location S 179.4. The support vehicle was facing in a westerly direction and traveling backwards at 5 – 6 miles per hour. The truck had a gang box in the bed that prevented being able to see through the back window. The mirrors on the truck were adjusted for the driver’s line of sight.

Claimant, seated in the passenger's seat of the vehicle, only had a line of sight 180° from his left to his right. The record reveals that the Claimant and his co-worker driving the truck performed two (2) running brake tests before setting on the track.

The two vehicles leading the consist stopped and when the driver of the support vehicle attempted to stop, the brakes failed and the support vehicle slid into the vehicle behind it causing a slight dent to the flash butt welding truck's front bumper.

Claimant and his co-worker were taken out of service and summoned to a formal investigation held on the property on March 17, 2021. By letter dated April 1, 2021, Claimant was advised that he had been found guilty of:

- (1) Failure to perform his job duties when he allowed his co-worker to operate a vehicle at a rate of speed that did not permit him to stop within half the distance of his range of vision, and
- (2) Improper performance of his job duties in that he failed to ensure that the hi-rail brakes were properly adjusted.

Claimant was given a twenty-two (22) day actual suspension as discipline for his part in the accident.

By letter dated April 19, 2021, 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 considered the transcript of the investigation, the full record developed on the property and the parties' respective arguments set forth in their submissions at arbitration. The Board acknowledges that the Carrier did commit a procedural error when it sent the Notice of Investigation to the wrong General Chairman but finds that neither the Claimant nor the Organization was prejudiced by the Carrier's clerical error and had adequate notice to allow the preparation of a defense.

Turning to the merits, the Board finds that the Carrier failed to prove either charge by substantial evidence and the Organization's claim must therefore be sustained.

The record makes clear that the cause of the collision was not excessive speed but rather the failure of an electronic sensor on the Hi-Rail braking system that was found to be faulty and changed the next day. Inspection of the brakes without specialized equipment would not have detected the faulty sensor. There is no evidence on this record that indicates that the driver of the truck was traveling at a rate of speed that would impede his ability to stop within half the range of vision nor that the Claimant was allowing him to do so.

Moreover, Claimant was specifically charged with failing to adjust the Hi-Rail Brakes when setting on, but the record demonstrates that the brakes are unable to be adjusted. The Charging Officer testified to that fact, but nevertheless prosecuted Claimant for failure to make an adjustment that the Charging Officer knows can't be made.

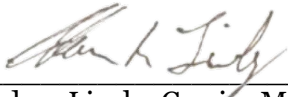
The Board therefore finds that the claim must be sustained.

Award:

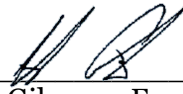
Claim sustained. The Carrier is directed to comply with the Award on or before thirty (30) days following the Award date below.



Richard K. Hanft, Chairman



Adam Lively, Carrier Member



Adam Gilmour, Employee Member

Dated at Chicago, Illinois, December 3, 2024.