

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6394

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 72
)	
and)	
)	Award No. 72
NORFOLK SOUTHERN RAILWAY COMPANY)	
(Former Norfolk and Western Railway Company))	

Richard K. Hanft, Chairman & Neutral Member
D. M. Pascarella, Employee Member
D. L. Kerby, Carrier Member

Hearing Date: July 25, 2017

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline ['time served' or approximately a twenty (20) day actual suspension] of Mr. A. Rodriguez, Jr., issued by letter dated June 23, 2014 in connection with his alleged improper performance of duty, in that while assigned to act as the Roadway Worker In Charge (RWIC) and provide stop board protection for Maintenance of Way employees working at CP 509 on June 2, 2014, he failed to ensure that all men and equipment were clear of Main 1 before giving permission to a train to proceed beyond the limits of the conditional stop boards was arbitrary and unwarranted.
2. As a consequence of the violation referred to in Part 1 above, Claimant A. Rodriguez, Jr., shall be exonerated of the charges and compensated as time worked for all wages he should have worked during the suspension."

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.

AWARD:

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 entered into the Carrier's service on June 5, 1996. On June 2, 2014 Claimant was assigned as a Foreman and held the position of "Roadway Worker in Charge" ("RWIC") assigned to protect maintenance workers in the vicinity of CP 509 in Chicago, Illinois while workers were installing a power switch point derail on Main Two and new walkways on the CR lift bridge at CP 509.

The Foreman running the crew of ten (10) men was the designated "point man" at the work site. The point man is the RWIC's eyes and ears at the work site. While the RWIC is not in visual contact with the work crew, the point man is right there relaying information to the RWIC.

On the day in question Claimant was running "Form Y" stop board protection for the crew installing the power switch point derail and walkways on the CR lift bridge. Claimant called the point man and informed him that the stop board protection would expire in five minutes. The Foreman at the worksite who was also acting as the point man for the work crew asked the RWIC for permission to run a test lift of the bridge before expiration of the protection. Permission was granted and the end-loader operator for the Derail crew asked permission to foul the track to drag expired rail into the clear. Permission was again granted by the RWIC.

A few minutes later, according to the transcript of the Investigation, the Foreman for the work crew radioed the Claimant and told him that everyone was in the clear and Claimant released a train to enter the work zone.

Unbeknownst to the RWIC, the point man in the work zone assumed that when the RWIC granted permission for the end loader to drag expired rail into the clear, that end loader separated from his work group and he was no longer responsible for him. The end loader was not, however, in the clear. Fortunately, the rails fouling the track caused the signal for the train to remain red and it did not enter into the work zone. There was, however, a stop board violation and Claimant was assessed a 20-Day suspension for his responsibility in the matter.

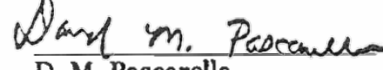
It is fortunate that a catastrophic result did not occur as a consequence of this breakdown in communication. Claimant was ultimately responsible for the safety of the crew in the work zone and he released a train into an area where the track was fouled by both personnel and material. The Claimant, while ultimately responsible was not solely responsible. He was let down by others. His point man, his eyes and ears in the work zone told him the work zone was clear. The End Loader Operator who was given five

minutes to complete his assignment, did not...and no one advised the RWIC that the tracks were still fouled. The RWIC assumed that the Loader Operator was still part of the work group that told him over the radio that they were all clear. If the Loader Operator withdrew from the work group, a new job briefing should have taken place and the RWIC informed of the change. That didn't happen.

In light of the above, the Board determines that the discipline assessed was too severe for Claimant's responsibility in this matter and the Carrier is directed to reduce Claimant's suspension to ten (10) days suspension and make Claimant whole for the other days he was separated from service.


Richard K. Hanft, Chairman


D. L. Kerby
Carrier Member


D. M. Pascarella
Employee Member

Dated at Chicago, Illinois, September 5, 2017