

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6394

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	Case No. 73
)	
and)	
)	Award No. 73
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 (dismissed from all service with Norfolk Southern Corporation) of Mr. L. Davis, issued by letter dated May 21, 2015 in connection with his alleged violation of Carrier Safety and General Conduct Rules, in that on April 9, 2015 while providing stop board protection at Mile Post CD 451.74 for a bridge replacement he fell asleep in his assigned vehicle while the men and equipment that he was supposed to be providing protection for were working on or about the tracks, causing delays in service, was capricious, excessive, harsh and unwarranted (Carrier's File MW-DEAR-15-31-BB-274 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant L. Davis shall be returned to service, compensated for all lost time/wages, have the charges dismissed/his record expunged of any reference to this incident, and have all rights and benefits 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.

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 the Carrier's service on June 8, 2011. On April 9, 2015 he was working as B&B Assistant Foreman on the Carpenter Force B06 in the Carrier's Calumet Maintenance Gang. Specifically, Claimant was the "Roadway Worker in Charge" entrusted to provide "Form Y Stop Board Protection" for a group of outside contractors working on a bridge replacement at Milepost 541.74.

On that date at around 11:15 a.m. Assistant Track Supervisor Morris was making FRA track inspections in his high rail vehicle and approached the conditional stop sign at MP 541.74. He testified that after repeated futile attempts to call Claimant on the radio to get permission to go around the stop signs, he approached Claimant's Company –assigned vehicle and observed Claimant sleeping in the truck. Claimant's supervisor was summoned to the scene where Claimant's truck was parked and Claimant was removed from service. After an investigation on the Property, the Carrier made the decision to dismiss Claimant from service.

The record reflects that Claimant, at the investigation, admitted that he fell asleep while on duty providing protection for workers at Milepost 541.74. That is a very serious offense. As the Carrier argues to this Board in its Submission, other Boards have found that in this industry, where, as here, Claimant admits to the violation charged, there can be no complaint that there was not a fair and impartial hearing. Moreover, with Claimant's admission, the Board must accept that the charges leveled were proven with substantial evidence. Finally, the discipline assessed was neither arbitrary, capricious, nor excessive given the gravity of failing to provide protection for workers in the work zone.

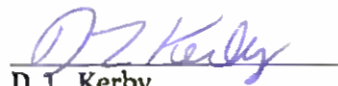
Normally, this Claim would be denied, but this matter presents a bit of a wrinkle. Claimant in this matter, the record demonstrates, was an up and coming employee who had been working quite a bit of voluntary overtime for the weeks prior to this incident. Claimant's immediate supervisor, just hours before the transgression occurred commented what a good job the Claimant was doing and thanked him for helping to take the burden off of him.

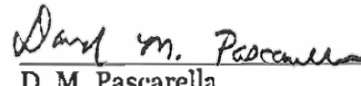
Unbeknownst to Claimant's immediate supervision, Claimant returned from military service suffering from Post-Traumatic Stress Disorder. That fact was disclosed to Carrier when Claimant was hired. The protected medical information was, however, never shared with Claimant's supervisors.

In addition, Claimant, although he knew that he suffered from the disorder, did not realize that drowsiness was a symptom of the disorder. Claimant testified at the investigation that he has since been under the care of a physician for this manifestation of the disorder.

The reason that could have led to Claimant's rule violation mitigates against dismissal due to the unique circumstances in this matter. The Board determines that the Claimant shall be reinstated without compensation for time out of service provided he is able to pass a return to work physical and follows his doctor's prescribed course of treatment for his disorder.


Richard K. Hanft, Chairman


D. L. Kerby
Carrier Member


D. M. Pascarella
Employee Member

Dated at Chicago, Illinois, September 5, 2017