

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6394

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	Case No. 74
)	
and)	
)	Award No. 74
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 services with Norfolk Southern Railway) of Mr. M. Gierschick, issued by letter dated June 15, 2015 in connection with his alleged conduct unbecoming an employee, in that he gave Carrier-issued equipment and information to a private citizen not employed by the Carrier which allowed such private citizen to program a private radio to transmit on Carrier radio channels was imposed following an investigation that was not fair and impartial (Carrier's File MW-HARR-15-17-LM-332 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Gierschick shall be reinstated to service, exonerated of all charges and compensated for all lost wages, including overtime and other credits and benefits denied him commencing May 4, 2015 and continuing until the matter is resolved."

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:

M. L. Gierschick was charged with conduct unbecoming an employee, in that he allegedly gave Carrier-issued equipment and information to a private citizen not employed by the Carrier which allowed such private citizen to program a private radio to transmit on Carrier radio channels.

In his written statement entered into the record, Mr. Gierschick admitted that he loaned a radio to Alex Bloom, a private citizen not employed by the Railroad, and testified that he gave him his RAC ID and Password in order to enter into Track View. The record evidence further shows that an ICON radio was recovered by the N. S. Police from a non-employee who stated he received the radio from Mr. Gierschick. Moreover, this sharing of information, RAC ID and password, was not a one-time occurrence, the record reflects that it happened in July, 2014 and then again in February, 2015.

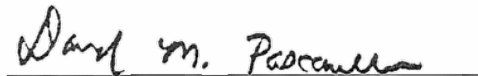
Based on the record, the charges have been proven by substantial evidence. The Claimant was afforded all procedural due process rights bargained for. The disciplinary penalty was neither arbitrary, capricious nor excessive. The Board can find no reason to overturn the decisions made on the property.



Richard K. Hanft, Chairman



D. L. Kerby
Carrier Member



D. M. Pascarella
Employee Member

Dated at Chicago, Illinois, September 5, 2017