

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6394

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 75
)	
and)	
)	Award No. 75
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. J. Cabrera, issued by letter dated September 8, 2015 in connection with his alleged improper performance of duty, in that on July 26, 2015 at approximately 9:03 A.M. while working as a Roadway Worker in Charge (RWIC) of his Smoothing Gang he failed to ensure the track and time given on Track Authority 2428 properly protected him and his gang for the limits needed to perform their assignment, resulting in him occupying track which was outside the limits of the track authority provided, was arbitrary and capricious (Carrier's File MW-HARR-15-26-LM-594 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Cabrera 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 July 26, 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:

Claimant in this matter entered the Carrier's service on October 29, 2007. On the date of the incident in question, Sunday, July 26, 2015, Claimant accepted an overtime assignment to be a machine operator and the Roadway Worker in Charge ("RWIC") of the Harrisburg Division Smoothing Gang S-3. Claimant had previously gained seniority as both an Assistant Foreman and as a Foreman, but on the date of the incident, was acting as a Machine Operator and RWIC. The gang had a Foreman, but he was not qualified to obtain on-track protection on the territory where work was to be performed. Thus, Claimant was to obtain track authority for the gang and pilot the crew consisting of a Tamper and Ballast Regulator from the Arco Switch to the worksite at CP Tulip on the Reading Line.

At 9:02 a.m. Claimant obtained Track Authority 2428 with limits between CP West Laurel to CP Tulip on Main Two. The Track Authority was correctly repeated by Claimant and correctly double-copied and repeated by the Foreman as well as the operators.

Claimant then proceeded to the grade crossing at MP TK 2.3 and set a high-rail truck on Main One and traveled on Main One to the Arco Switch where he piloted the equipment through the switch onto Main One.

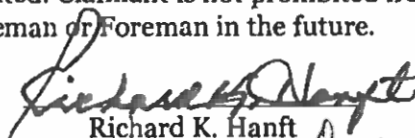
Because Claimant piloted the crew onto the unprotected Main One rather than Main Two that he had authority to foul, a catastrophic event was narrowly averted when Westbound Train 11J's crew saw the equipment ahead of them and threw the train into emergency stopping 2100 feet short of a collision. Upon the instructions of the Assistant Division Engineer, the equipment was returned to the Arco Spur and Claimant and the rest of the work group were taken out of service.

The Board recognizes the extreme seriousness of Claimant's proven improper performance of duty to protect his crew and in some circumstances dismissal would not be considered extreme. In this instance, however, the Board finds that Claimant's previous record of 8 years good service as a Machine Operator, Assistant Foreman and Foreman, and the rest of the crew's failure to recognize Claimant's error when they too double-copied and repeated the Track Authority mitigate against the discipline assessed. We believe the Claimant's career is salvageable and therefore the Carrier is directed to reinstate the Claimant without compensation for time out of service to his Machine Operator seniority. Claimant's Foreman and Assistant Foreman Seniority shall be forfeited. Claimant is not prohibited from bidding on and attempting to re-qualify as an Assistant Foreman or Foreman in the future.

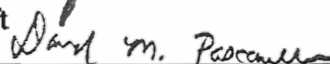


D. L. Kerby
Carrier Member

Dated at Chicago, IL, September 05, 2017



Richard K. Hanft



D. M. Pascarella
Employee Member