

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6394

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	Case No. 76
)	
and)	
)	Award No. 76
NORFOLK SOUTHERN RAILWAY COMPANY)	
(Former Norfolk and Western Railway Company))	

Richard K. Hanft, Chairman & Neutral Member
J. Dodd, 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. M. Young issued by letter dated June 26, 2015 in connection with his alleged improper performance of duty, in that at approximately 1:00 P.M. on May 28, 2015 while tramming to CP 426 in a ballast regulator he allegedly failed to stop within half the range of vision at the Laurel Street grade crossing resulting in the regulator colliding with a private vehicle was arbitrary, capricious and unwarranted (Carrier's File MW-DEAR-15-46-LM-410 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Young shall receive the maximal remedy allowed under Rule 30(d) of the Agreement."

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:

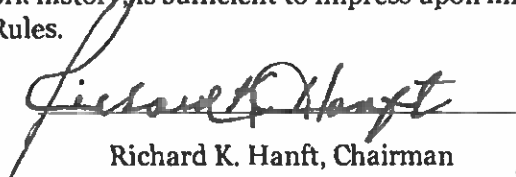
Claimant entered the Carrier's Service on November 1, 2004 as a B&B Helper. He established Machine Operator seniority on December 4, 2006 and on May 28, 2015 was operating a Ballast Regulator on Smoothing Gang No. 5 when the Ballast Regulator collided with a private vehicle in a crossing near Elkhart, Indiana.


Claimant's work group was tramming in an eastbound direction when they approached the Laurel Street grade crossing. Claimant's Ballast Regulator was the second machine in the convoy, following a Tamper. As the Tamper approached the crossing, its weight activated the crossing gates. An elderly motorist, blind in the eye nearest the approaching machinery stopped at the crossing gate. The Tamper proceeded through the crossing with the Ballast Regulator following about 40 feet behind. The weight of the Ballast Regulator was apparently not sufficient to keep the crossing gates activated and they went up. The motorist, unaware that there was a second machine approaching, proceeded into the crossing. Claimant was unable to stop his machine and collided with the motorist causing, according to the Police Report, extensive damage.

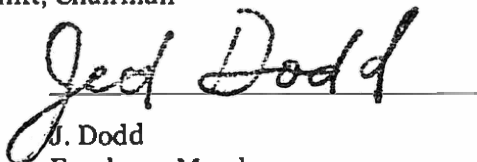
Claimant was subsequently held out of service and summoned to an investigation where he was found responsible for violation of Operating Rule 813 – Highway Grade Crossings; Warning Devices (a) On-Track equipment approaching a highway grade crossing must be prepared to stop short and must not enter the crossing until the way is known to be clear.

The Organization took exception to the dismissal and progressed an appeal in the usual and customary manner. After review by the highest designated Carrier officer and conference on the property, the appeal remained declined and this matter is now before the Board.

There is no doubt that Claimant entered the crossing when the way was not clear and was unprepared to stop short. For that Claimant bears responsibility. But, there were some unique circumstances involved in this matter. Hence, the Board determines that the Claimant shall be reinstated immediately and the dismissal shall be reduced to a twelve (12) month suspension. Claimant got into a wreck at the grade crossing. There is no question that it was the Machine Operator's duty to be able to stop the machine short when entering a crossing. Claimant should have received discipline for violating the rule. But, this matter should not have taken 2-1/2 years to be heard on appeal. It was neither the Carrier's fault nor the Organization's that it took as long as it did, but plainly, Claimant and his family should not suffer because the "System" cannot adjudicate claims within a reasonable time. A twelve-month suspension, in light of the Claimant's work history, is sufficient to impress upon him the importance of following the Operating Rules.


Richard K. Hanft, Chairman


D. L. Kerby
Carrier Member
Dated at Chicago, Illinois, September 05, 2017


J. Dodd
Employee Member