

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 6394**

Brotherhood of Maintenance of Way Employees)	
Division – IBT Rail Conference)	
)	Case No. 79
And)	
)	Award No. 79
Norfolk Southern Railway Company)	
(Former Norfolk & Western Railway Company))	
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Richard K. Hanft, Chairman and Neutral Member
D. M. Pascarella, Employee Member
D. L. Kerby, Carrier Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. D. Papesh, issued by letter dated December 7, 2015, in connection with his alleged improper performance of duty and conduct unbecoming an employee in that: (1) he left Company Vehicle (N5708514) unattended with the hood open in the Holiday Inn parking lot in Delmont, Pennsylvania, at approximately 9:15 p.m. on October 21, 2015; (2) although he discovered a ruptured radiator hose in vehicle (N5708514) at that time, he failed to notify supervision or otherwise arrange for repairs to his assigned vehicle (N5708514) on October 21, 2015; (3) marking off under false pretenses and failing to protect his assignment at the designated time on October 22, 2015; and, (4) he falsified payroll by claiming full pay when you were late in reporting to your assignment was arbitrary, capricious and unwarranted [Carrier’s file MW-CHAR-15-10-M1-880 NWR].
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Papesh shall be reinstated immediately, exonerated of all charges and compensated all lost wages, including overtime, credits and benefits denied to him, commencing October 26, 2015 until he is placed back in service or until this matter is resolved.”

FINDINGS:

Public Law Board 6394, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the

dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other cases.

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant, at the time giving rise to the investigation had more than seven (7) years' service with the Carrier and was working as an equipment mechanic on T & S 31 Gang. During the week October 19 – 22, 2015 Claimant's gang was working four (4) ten (10) hour days, Monday Through Thursday and the record reflects worked 3.5 hours overtime on each day. Claimant, being an equipment mechanic, is assigned a Carrier service truck that has tools and materials stored onboard. Claimant is permitted to use the truck for transportation to and from his lodging accommodations and the worksite. Claimant possesses a CDL license and is subject to the Federal Motor Carrier Safety Act while operating the Carrier's vehicle.

After being released from the worksite on Wednesday, October 21, 2015 between, according to Claimant's testimony at the investigation, 6:30 and 7:00 p.m. while driving to the hotel, Claimant detected the faint odor of antifreeze in the truck's cab. Upon arriving at the hotel that the crew was quartered in, Claimant raised the truck's hood and noticed a leak in the truck's upper radiator hose. He left the truck's hood open and walked away.

Claimant testified that at that point he thought "I'll go get cleaned up, get something to eat, lay down and then get hold of ARI first thing in the morning."

11V Rule 18 states in relevant part that: "All known details of the problem concerning a disabled vehicle must be promptly reported by the driver to ARI for immediate assistance and to the driver's supervisor." Claimant did not promptly report the leaking hose to ARI or his supervisor.

At about 9:30 that same evening, the record shows, Claimant's supervisor arrived at the hotel, noticed Carrier's truck's hood open, texted Claimant to inquire why it was open and then went to investigate the reason for himself. Upon discovering the broken radiator hose, the supervisor contacted ARI and arranged for the truck to be repaired that evening. Repairs, the record reveals, were complete by 1:00 a.m. the next morning.

Claimant arose on the morning of October 22, 2015 to his supervisor's text message inquiring about the truck's hood and replied that the truck had a broken hose.

At 4:38 a.m. Claimant's supervisor responded to that text informing Claimant that the truck had been repaired and not to be late to work. Claimant arrived at the work site at 5:32 a.m., half an hour late. He worked the rest of the shift and returned home for the scheduled rest period.

On the following Monday Claimant was held at the hotel for a conference with the General Supervisor of Work Equipment after which he was taken out of service. Claimant was subsequently summoned to an investigation and charged with the following:

"Your improper performance of duty and conduct unbecoming an employee in that: (1) you left Company Vehicle (N5708514) unattended with the hood open in the Holiday Inn parking lot in Delmont, Pennsylvania, at approximately 9:15 p.m. on October 21, 2015; (2) although you discovered a ruptured radiator hose in vehicle (N5708514) at that time, you failed to notify supervision or otherwise arrange for repairs to his assigned vehicle (N5708514) on October 21, 2015; (3) marking off under false pretenses and failing to protect his assignment at the designated time on October 22, 2015; and, (4) you falsified payroll by claiming full pay when you were late in reporting to your assignment."

After a full investigation, the hearing officer dismissed count four of the charge and found Claimant guilty as charged on counts one, two and three and dismissed him from service.

The Board finds that there was substantial evidence on the record to support the finding that Claimant failed to promptly report the truck's condition to his supervisor as required by Rule 11V 18 and that Claimant was late reporting for duty on October 22, 2015 in violation of SGCR 919.

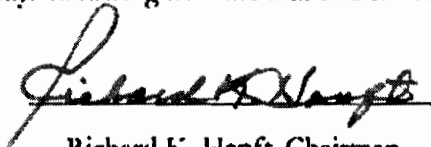
Strict compliance with Carrier's operational rules is essential to the safe and efficient operation of the workforce. Claimant's decision to put off until the morning his duty to report the vehicle's disability amounts to negligence, but not necessarily an intent to dishonestly get out of work.

The Board finds no evidence to support the finding that Claimant marked off under false pretenses.

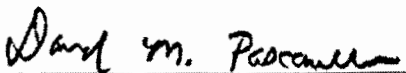
Thus, the Board determines that the penalty of dismissal was excessive and directs the Carrier to reinstate Claimant, without restrictions on his seniority, but without compensation for time out of service.

AWARD

Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty days following the date that two members of this Board affix their signatures thereto.

A handwritten signature in cursive script, appearing to read "Richard K. Hanft", written over a horizontal line.

Richard K. Hanft, Chairman

A handwritten signature in cursive script, appearing to read "D. M. Pascarella", written over a horizontal line.

D. M. Pascarella, Employee Member

A handwritten signature in cursive script, appearing to read "D. L. Kerby", written over a horizontal line.

D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, January 4, 2018