

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD 6394

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| Brotherhood of Maintenance of Way Employees |) | |
| Division – IBT Rail Conference |) | |
| |) | Case No. 85 |
| And |) | |
| |) | Award No. 85 |
| Norfolk Southern Railway Company (Former |) | |
| Norfolk & Western Railway Company) |) | |
| |) | |

Richard K. Hanft, Chairman and Neutral Member
Jed Dodd, Employee Member
D. L. Kerby, Carrier Member

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline [thirty (30) days actual suspension] of Mr. R. Shelby, issued by letter dated October 18, 2011, in connection with his alleged improper performance of duty in that on August 16, 2011, it was discovered that Yard Cleaner YCC97301 that he was assigned to operate collided with Jet Snow Blower JSB008, causing significant damage to the Jet Snow Blower on or about July 5, 2011, also, in connection with his alleged conduct unbecoming an employee in that on August 16, 2011, he provided false and/or misleading information in a matter under investigation when he was questioned about the aforementioned collision was unwarranted (Carrier’s File MW-DEAR-11-47-LM-320 NWR)
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Shelby shall be exonerated of the charges and compensated as time worked for all wages he should have worked during the thirty (30) day suspension.”

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:

On August 16, 2011 it was discovered that a jet snow blower stored on Track 11½ at the Elkhart, IN yard had sustained damage. Inspection of the equipment showed that there was yellow paint on the nose of the snow blower, that its canvas cover had been torn and that there were relatively fresh gouges in the snow blower's metal. A subsequent inspection of Yard Cleaner YCC 9730 showed scraped yellow paint and shredded canvas on the knuckle of the machine. Claimant is the only employee authorized to operate the Yard Cleaner.

Claimant was summoned to a formal investigation that took place on October 13, 2011. By letter dated October 18, 2011, Claimant was notified that he had been found guilty of improper performance of duty in that on August 16, 2011 it was discovered that the yard cleaner Claimant was assigned to operate collided with the snow jet blower causing significant damage to the snow blower and providing false and misleading information regarding a matter under investigation when he was questioned about the collision.

The Board's review of the record developed on the property indicates beyond a doubt that an impact occurred wherein the yard cleaner came into contact with the snow blower. Moreover, the preponderance of evidence points to the Claimant as the individual who was operating the yard cleaner when the collision occurred.


While the preponderance of evidence leads to the conclusion that a collision occurred between the two machines, there was not enough credible evidence on the record to prove that Claimant was aware of or tried to cover up either the collision or the resulting damage.

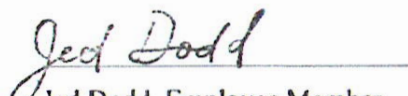
Based on the credible evidence on the record that a collision occurred causing damage to the jet snow blower, the improper performance of duty charge is found to be supported by the record evidence. The charge that Claimant provided false and/or misleading information in a matter under investigation is not supported by the record evidence and has not been proven by substantial evidence. Thus, the discipline assessed on the property is excessive for the violation proven.

The Carrier is directed to reduce the discipline assessed in this matter to a ten (10) day suspension and make the Claimant whole for all 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.


Richard K. Hanft, Chairman


Jed Dodd, Employee Member


D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 3, 2018