

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
DIVISION – IBT RAIL CONFERENCE	)	
	)	Case No. 88
	)	
	)	Award No. 88
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER	)	
NORFOLK & WESTERN RAILWAY COMPANY	)	

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

**STATEMENT OF THE CLAIM:** “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. K. Honeywood, issued by letter dated September 3, 2016, in connection with his alleged: 9a) improper performance of duty and failure to follow instructions in that on July 23, 2016, after being instructed to perform mandatory overtime following his shift in connection with a derailment in the Conway Yard, he left the worksite without obtaining permission or authorization from supervision; (b) improper performance of duty and failure to follow instructions in that on August 1, 2016, while assigned to assist with the switch installation in East Conway, he abandoned the assignment without permission and was found assisting the locomotive crane at the Orange Loop track in Conway Yard; and (c) conduct unbecoming an employee and insubordination in connection with the above charge in that on August 1, 2016, after he was instructed to perform mandatory overtime with the switch installation at East Conway, he refused to follow the instructions and made offensive and profane comments to supervision during the conversation, was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier’s File MW-PITT-16-68-LM-739 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant K. Honeywood shall have the Carrier’s charges against him exonerated immediately, be made whole for all monetary loss and economic hardship endured by him during such period of unemployment without just cause and otherwise receive the remedy prescribed under Rule 30(d) of the Agreement.”

**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 precedence 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 in this matter was, at all time relevant to this dispute, a Track Patrol Foreman on the Pittsburgh Division Weekend Gang. He had six (6) years' service with the Carrier and an unremarkable disciplinary record. His regular workweek is Saturday through Wednesday with Thursday and Friday as rest days.

On Saturday, July 23, 2016 Claimant and three other members of the gang were assigned to install ties from 900 Track to new installation. About 9:30 AM the Terminal Supervisor became aware that a derailment had occurred on the south side of the Conway Hump. The Terminal Supervisor informed the gang that cranes would arrive between Noon and 1:00 PM to re-rail the equipment. The Terminal supervisor did not receive a Yard Permission Form to begin work on the track damaged by the derailment until 4:45 PM. At that time the Terminal Supervisor noticed that Claimant had left for the day at the end of his regular shift. The Terminal Supervisor did not report that Claimant did not stay for overtime for five (5) or six (6) days thereafter.

On August 1, 2016, the weekend gang was assigned to install the No. 71 switch at East Conway. Claimant rode in the truck to the worksite with the Terminal Supervisor. During that morning while they were using the crane, Claimant asked Justin Irvin (Phonetic) if they were going to need help with the crane and unloading the panels and he was told after lunch he was to go with the crane and help unload panels. Sometime later that morning, the Track Supervisor was notified of a track defect elsewhere and dispatched Claimant and a co-worker to that location, 9 Yard under the ramp, to inspect and repair the defect. Claimant and his co-worker made the repair and reported back to the Track Supervisor what they had found and what they had done to correct it. The Track Supervisor instructed them to return to the switch job. As they were in route back to the switch, the Track Supervisor called them and told them that he had lunch catered in and that they should go to the tool house and have lunch, which they did.

As Claimant was finishing lunch, he spoke to the crane operator who informed him that after lunch the crane was going to unload panels and, since that is a job that

Claimant had previously been told he was supposed to handle, he went with the crane to help them unload the panels. Next, according to the Claimant, the crane operator spoke to someone on the phone and told Claimant that he was supposed to go with the crane over to the Orange Loop and tie it down for the night.

As Claimant was working with the crane, the Terminal Supervisor found Claimant and informed him that he was supposed to have returned to the switch job after lunch. Claimant got into the Terminal Supervisor's truck and headed back to the switch job. During the trip from the crane to the switch job, Claimant and the Terminal Supervisor apparently had an argument during which the Terminal Supervisor asserts that the Claimant used profane and offensive comments towards him. Claimant denies doing so. The Terminal Supervisor took Claimant to the office rather than the switch job and sent him home for the day. The following day the Claimant was taken out of service.

As a result of Claimant's alleged failure to perform mandatory overtime on the derailment on the Conway Hump on July 23, 2016 Claimant was charged with Improper Performance of Duty in that he failed to follow instructions.

Claimant was charged with Improper Performance of Duty for his actions on August 1, 2016 on the East Conway switch job because, the Carrier avers, Claimant abandoned his assignment. He was further charged with insubordination in that he allegedly refused to perform mandatory overtime and conduct unbecoming an employee as a result of the argument he had with the Terminal Supervisor wherein he supposedly used offensive and profane language directed at the Carrier Official.

An investigation was held on August 17, 2016 and Claimant was notified by letter dated September 3, 2016 that he was found guilty of all charges and dismissed from service. Carrier subsequently commuted the dismissal to a two hundred sixty-four (264) day suspension and reinstated Claimant on a leniency basis. The matter now comes before the Board for final adjudication.

After thorough review of the record developed on the property, the Board determines that there was insufficient evidence to prove willful intent to violate the rules charged on July 23, 2016: Improper performance of duty and abandonment of assignment/improper performance of duty and insubordination on August 1, 2016. What we do find, instead is a lack of communication.

The Claimant testified that on July, 23, 2016 the Terminal Supervisor never briefed the gang that there was mandatory overtime and that track time wasn't obtained for the Conway repair until after the end of Claimant's regularly scheduled shift. The

. Terminal Supervisor it seems just assumed that the gang understood to stay.

In regard to the charges relating to the switch change on August 1, 2016, again, poor communications played a part in Claimant working somewhere other than where the Terminal Supervisor thought he should be. Claimant testified without rebuttal that Justin Irving, the foreman in charge of the switch job had directed him to work with the crane unloading panels after lunch. That is what Claimant was doing when the Terminal Supervisor came to get him.

As far as the charges of insubordination and conduct unbecoming an employee on August 1, 2016, those charges present more than one problem for the Board. The Terminal Supervisor contends that when he told Claimant that he was returning him to the switch job that Claimant engaged in profane and offensive language toward him. Claimant on the other hand recalled asking how late they were going to work in order to make arrangements with his babysitter and the Terminal Supervisor used offensive and profane language towards him.

The problem, reviewing this record, is that it contains directly contradictory testimony between the Claimant and the Carrier's sole witness against him with no corroborating testimony for either. Hence, we are forced to conclude that there was not substantial evidence to support a finding of guilt.

The Board, however, is not persuaded that Claimant was entirely innocent and that the Terminal Supervisor sent him home for the day and subsequently took him out of service for no reason whatsoever.

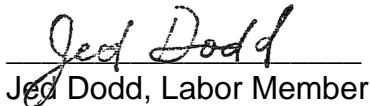
The Board recognizes that Carrier reinstated Claimant on a leniency basis, but only after a two hundred sixty-five (265) day suspension. We feel that the length of suspension was too severe and therefore commute the suspension to one hundred eighty (180) days with compensation for time lost during the 85 calendar day difference.

**AWARD:**

Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty (30) days following the date that two members of this Board affix their signatures thereto.



Richard K. Hanft, Neutral Chairman

  
Jed Dodd, Labor Member  
D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, November 21, 2018