

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
DIVISION – IBT RAIL CONFERENCE)

) Case No. 89

) Award No. 89

NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)
NORFOLK & WESTERN RAILWAY COMPANY))

Richard K. Hanft, Neutral Chairman
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. E. Pardo, issued by letter dated April 17, 2017, in connection with his alleged improper performance of duty, in that while assigned as foreman on Smoothing Gang 6, on Tuesday, February 28, 2017, he handled the switch and derail at QM 0.5 on the Horsehead Industrial Line and failed to properly line and lock the switch at the end of the day was arbitrary and capricious (Carrier’s File MW-HARR-17-19-LM-163 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant E. Pardo shall be put back into service and allowed to resume his career.”

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 a twelve (12) year employee with an unremarkable disciplinary history. On February 28, 2017 he was assigned as foreman of the Harrisburg Division Smoothing Gang S06. That was a Tuesday and the gang was smoothing the Elmira, New York Siding. When the gang completed their work for the day they trammed back to the Horsehead Industrial Line and Claimant handled the QM 0.5 switch to allow the machines to enter the siding.

As the machine shut down and locked their machines up, Claimant applied and locked a derail between the machines and the Horsehead Industrial Line and locked the Q0.5 switch. Claimant inadvertently locked the switch in position for the turnout. Claimant explained that he had done so in a momentary loss of focus on his responsibility.

There is no doubt that Claimant violated the rules cited and improperly performed his duty as a foreman. Claimant was brought to an investigation and admitted the same. After reviewing the testimony at the investigation, the Hearing Officer determined to dismiss Claimant by letter dated April 17, 2017.

Here, the Claimant admitted to the offense and rules violations that he was accused of. Thus, there was substantial evidence of violation of the charged offenses.

Moreover, although the Organization argues that Claimant did not receive a fair and impartial investigation because the Hearing Officer cut off certain lines of questioning relative to Claimant's past service record that he deemed to not be pertinent to the charge letter, we see no violation of Claimant's procedural due process rights here.

The Board does, however, deem the discipline of dismissal excessive in this particular situation when considering mitigating factors. Claimant is a relative long-term employee, who the Track Supervisor characterized as a good employee. Claimant had only been serving as a foreman for about six weeks and had an unremarkable disciplinary record.

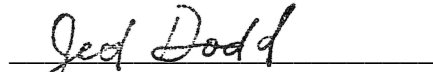
Considering the foregoing, we find Claimant's past service record and relative inexperience as a foreman mitigates against dismissal. The Board directs the Carrier to reinstate Claimant without compensation for time out of service and without foreman seniority.

AWARD:

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

A handwritten signature in cursive script, reading "Richard K. Hanft".

Richard K. Hanft, Neutral Chairman

A handwritten signature in cursive script, reading "Jed Dodd".

Jed Dodd, Labor MemberA handwritten signature in cursive script, reading "D L Kerby".

D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, November 21, 2018