

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6394**

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

) Case No. 90

) Award No. 90

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

---

Richard K. Hanft, Chairman and Neutral Member  
D. M. Pascarella, Labor Member  
D. L Kerby, Carrier Member

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

1. The Carrier’s discipline [suspension of five (5) actual days] of Mr. S. McCarty, issued by letter dated September 5, 2017, in connection with his alleged failure to protect his walking spiker machine operator assignment - in that he was absent from his assignment without authorization from the proper authority beginning June 13, 2016 and continuing was discriminatory and capricious (Carrier’s File MW-GNVL-16-38-SG-625NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant S. McCarty shall have the five (5) day suspension waived.”

**FINDINGS:**

Public Law Board No. 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 entered the Carrier's service on January 30, 2012. The record reveals that on June 10, 2016 Claimant was and had been for two weeks prior, performing temporary service outside assignment by bulletin operating a Walking Spike Machine on the TS-2 Timber and Surfacing Gang. During the two week period that Claimant was operating the machine, that position was advertised and awarded to a more senior employee. That employee reported to the gang for service on June 13, 2016, but Claimant never showed up for work again despite not having been formally released from the gang.

Claimant was removed from service, charged with and summoned to an investigation concerning his responsibility, if any, for failing to protect his assignment. After several postponements, an investigation was held, *in absentia*, on August 16, 2017. Claimant was found guilty of failing to protect his assignment and assessed a five (5) day actual suspension.

It has come to the Board's attention that after this dispute was heard by the Board, but before an Award was issued, Claimant and the Carrier entered into an Agreement that resolves the instant dispute. Accordingly, the Claim is dismissed.

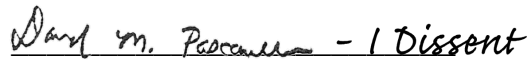
**AWARD:**

Claim dismissed.

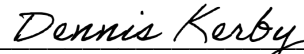


---

Richard K. Hanft, Chairman and Neutral Member



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.