

**NATIONAL MEDIATION BOARD**

**PUBLIC LAW BOARD NO. 6394**

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

) Case No. 92

) Award No. 92

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

1. The Carrier’s discipline (dismissed from all services of Norfolk Southern Corporation and its affiliates) of Mr. J. Law issued by letter dated August 31, 2017, in connection with his alleged failure to follow instructions and failure to protect his assignment in that despite being previously counseled he was absent from his assignment without authorization from the proper authority on July 24, 2017 when he failed to report for duty and failed to properly notify supervision that he would not be at work was extensive and undeserved (Carrier’s File MW-PITT-17-71-LM-560 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Law shall be reinstated to service upon receipt of the Organization’s written appeal.”

**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 service with the Carrier on July 27, 2004 and had about twelve (12) years of service without disciplinary action taken against him. In 2016 however, Claimant began having problems showing up for work. In August 2016 Claimant was assessed a five (5) day suspension for failure to protect his assignment and then again in October 2016 Claimant was assessed a ten (10) day suspension for failure to protect his assignment.

In the instant matter before the Board, Claimant failed to show up for work and failed to call in to report off as instructed on July 24, 2017, only nine (9) months after his most recent disciplinary suspension for the same rule violation. Claimant explained, without rebuttal, that on July 23, 2017, late in the evening, he was made aware that a warrant had been issued for his arrest in connection with unpaid traffic citations dating back to 2014. The record contains no evidence to contradict Claimant's assertion that the fines were paid when due and this was all a mistake. Nevertheless, it is undisputed that Claimant was taken into custody on the morning of July 24, 2017 and spent the next three and one half (3½) days as a guest of the gendarme.

The Organization insists that Rule 24 of its agreement with the Carrier provides that when:

"An employee is detained from work on account of sickness or for other unavoidable cause shall notify his foreman or the proper officer as soon as possible"

Thus, the Organization argues, the Claimant was unable to inform the Carrier of his impending absence due to the fact that law enforcement confiscated his cell phone when he was taken into custody and that thereafter he notified the Carrier "as soon as possible" pursuant to Rule 24.

The difficulty with the Organization's argument is that Claimant testified that he became aware that there was a warrant for his arrest on the evening of July 23<sup>rd</sup> and wasn't taken into custody until after starting time on the next morning. Hence, Claimant had the opportunity to meet his obligation as instructed to call in to a supervisor if he was unable to report for work.

Thus, the Board finds that the discipline assessed was warranted. However, given the Claimant's previous service record prior to 2016, the Board determines that

Claimant is worthy of consideration to be reinstated without compensation for time out of service and with seniority unimpaired and it is so ordered.

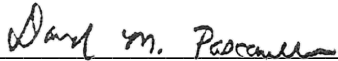
**AWARD:**

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 hereto.

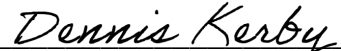


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Richard K. Hanft, Chairman and Neutral Member



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.