

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6394

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

) Case No. 94

) Award No. 94

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

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 service with Norfolk Southern Corporation) of Mr. C. Coker, issued by letter dated February 2, 2018, in connection with his alleged conduct unbecoming an employe in that he made inappropriate and threatening comments to supervision on January 5, 2018 at approximately 9:00 A.M. in the Rockport Yard Office was capricious, excessive, harsh and unwarranted (Carrier’s File MW-DEAR-18-02-LM-16 NWR).
2. As a consequence of the violation referred to in Part 1 above, the Carrier shall restore Claimant C. Coker to active service, restore all lost wages and benefits, expunge his record of this matter and otherwise make him whole.”

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 August 28, 2011 and had approximately six and one half (6-½) years' service at the time that the alleged misconduct occurred. Claimant, at the time of the incident was working as a foreman on Smoothing Gang # 20 in the Cleveland, OH area.

Claimant reported to the Rockport Yard Office at 9:00 A.M. on January 5, 2018 for the purpose of signing a waiver in connection with an unrelated disciplinary matter. The Assistant Track Supervisor and two (2) of Claimant's co-workers were present to witness the signing of the waiver. According to the Assistant Track Supervisor's testimony, Claimant remarked to him that Claimant's Union Representative had told him that he was not a model employee and that is why he got the twenty (20) day suspension and further remarked to the Assistant Track Supervisor that if he was not a model employee before, that he is now a disgruntled employee and will be looking for blood.

The Assistant Track Supervisor testified that he took Claimant's statement as a threat and reported the same to the Assistant Division Engineer.

When Claimant returned from his suspension on January 9, 2018, after the morning meeting he was removed from service. A formal investigation took place on January 23, 2018 and by letter dated February 2, 2018 Claimant was advised that he was dismissed from all service with the Carrier.

Claimant in this matter is a relatively short-term employee but has an overall clean disciplinary record. He holds both foreman and assistant foreman seniority which attest to his abilities as a Railroader. Clearly Claimant is capable of performing in a position of responsibility.

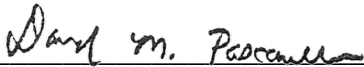
On the other hand, threatening a Carrier Officer or even making open-ended, indirectly threatening statements in this day and age is not something the Carrier should or must tolerate. Threatening behavior is an offense warranting dismissal. However, given the generality of the statement made and the capability of the statement to be received in different ways by different people and the fact that Claimant was neither boisterous nor belligerent when the statement was made, and given the particular circumstance involved in this matter, the Board is convinced that Claimant's career is redeemable and determines to give Claimant a second chance. Claimant is to be reinstated without compensation for time out of service. Claimant is further prohibited from exercising either foreman or assistant foreman seniority for a period of one (1) year from the date of his reinstatement.

AWARD:

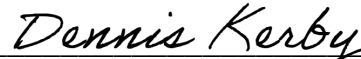
Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty (30) days following the date that two members of this Board affix their signatures hereto.



Richard K. Hanft, Chairman and Neutral Member



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.