

**NATIONAL MEDIATION BOARD**  
**PUBLIC LAW BOARD NO. 6394**

BROTHERHOOD OF MAINTENANCE OF WAY	)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE	)	Case No. 95
	)	
and	)	
	)	Award No. 95
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER	)	
NORFOLK & WESTERN RAILWAY COMPANY	)	

Richard K. Hanft, Chairman & Neutral Member  
D. M. Pascarella, Employee Member  
S. M. Goodspeed, Carrier Member  
Hearing Date: July 25, 2019

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

1. The Carrier’s discipline (dismissal) of Mr. C. Curtis, issued by letter dated June 1, 2018, in connection with his alleged improper performance of duty in that on March 9, 2018, the material handling truck that he was operating collided with a METRA train in a road crossing through which he was passing as he exited Landers Yard in Chicago, Illinois, causing significant damage to the material handling truck, was capricious, excessive, harsh and unwarranted (System File Curtis060618/MW-DEAR-18-18-LM-117 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Curtis shall now be returned to service, compensated for all lost time and restored with all rights and benefits.”

**FINDINGS:**

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

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 had been an employee of the Carrier for just over seven (7) years at the time of the incident giving rise to this dispute. On the date of the incident, March 9, 2018,

he was working as a Material Handling Truck Operator and pulling out of the Lander's Yard in Chicago, Illinois. Claimant's statement, taken subsequent to an accident involving Claimant, the Material Handling Truck and a Metra Train indicates a collision occurred around 9:30 AM at a grade crossing located near 2500 West Columbus Avenue in Chicago, Illinois. Claimant's statement provides:

"Heading North on Lander's Metra Crossing about 9:20 or 9:30, not sure. I approached the crossing, stopped, looked right, left, right, windows down, not on my phone, in 2 gear. I proceeded looking right again, I noticed a train. I tried to clear the track which I was on now, but the rear boom was struck by Metra passenger train."

At the Investigation on the Property, a video taken from the head end of the Metra Train that was involved in the incidence was viewed. After the tape was viewed, the Claimant was asked about his statement given shortly after he returned to the property after receiving medical care. The Hearing Officer asked Claimant:

"Okay, in there it says you stopped at the, at the crossing. Did you stop before going across the tracks?

No."

As there was, the photographic evidence entered into the record shows, a stop sign and cross bucks at the grade crossing, Claimant by his own admission contradicted his own statement that he stopped the truck after approaching the crossing. Failure to stop at a stop sign in this particular circumstance constitutes Improper Performance of Duty. Hence, the Carrier produced substantial evidence to support the charge against the Claimant.

The Organization argues that the ultimate penalty of dismissal meted out in this matter is excessive. Given the extent of the property damage incurred by the Carrier and the imminent danger Claimant exposed himself, the Carrier, the Metra Train Crew and the passengers aboard the Metra Train to, the Board would normally disagree. Given the particular circumstances in this matter, that Claimant was a seven (7) year employee with no disciplinary record, that he had never before been in an accident and that he had only bid into the position a month earlier, the Board finds that those factors mitigate against dismissal and order Claimant to be reinstated with seniority unimpaired, but without compensation for time out of service.

AWARD:

Claim sustained in accordance with the findings.

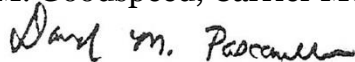


Richard K. Hanft, Chairman



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S. M. Goodspeed, Carrier Member



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D. M. Pascarella, Labor Member

Dated at Chicago, Illinois, August 26, 2019