

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6394

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 96
)	
and)	
)	Award No. 96
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 [a time served actual suspension of approximately one hundred (100) days’ duration] of Mr. G. Campuzano, issued by letter dated December 6, 2017, in connection with his alleged: (1) failure to follow instructions in that on August 30, 2017 he received a Dispatcher’s Block numerous times on Westbound Main between CP Burnham and CP Stateline from 11:00 A.M. and 4:30 P.M. as a means of adjacent controlled track protection despite being instructed by Track Supervisor T. Lyons on August 29, 2017 to only obtain a Track Authority on the Westbound Main as a means of adjacent controlled track protection and (2) improper performance of duty as a roadway worker in charge in that while working with the Rail Train on August 30, 2017 at approximately 1:30 P.M., he failed to perform a proper job briefing with Backhoe Operator Leyva and failed to provide proper track protection by not receiving a track authority prior to giving Backhoe Operator Leyva permission to foul the adjacent Westbound Main at Mile Post B505.2 was capricious, excessive, harsh and unwarranted (Carrier’s File MW-DEAR-17-106-LM-689 NWR).

2. As a consequence of the violation referred to in Part 1 above, Claimant G. Campuzano shall be compensated for all lost time with all rights and benefits restored.”

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 almost ten (10) years' service with the Carrier at the time of the incident giving rise to this dispute. On August 30, 2017 Claimant was assigned as a Track Patrol Foreman. He was tasked on August 30, 2017 with acting as a Pilot and Roadway Worker in Charge ("RWIC") for a work train that was assigned to pick up scrap rail laying on both sides of the Eastbound Main Line between CP Burnham and CP Stateline.

On Tuesday, August 29, 2017, Claimant inquired of his Track Supervisor whether a Dispatcher's block would be sufficient to provide track protection to his work group on the following day. The Track Supervisor informed Claimant that the only way to provide adequate protection was to secure an Exclusive Track Occupancy by obtaining a Track Authority on the Westbound Main.

Claimant did obtain a Track Authority on the Eastbound Main the following day, Wednesday, August 30, 2017 at 9:32 AM. At 9:40 AM Claimant placed a telephone call to his Assistant Division Engineer ("ADE") asking him if a Dispatcher's block would be sufficient to foul an adjacent track. The ADE also informed Claimant that in order to foul an adjacent track Claimant would need to obtain Exclusive Track Occupancy through a Track Authority or stop board protection.

Despite the instructions given by Claimant's supervisors, Claimant requested a Dispatcher's block at 11:54 AM for the West Main track and asked that it be removed at 12:14 PM. A second request for a dispatcher's block was requested at 12:50 PM.

At approximately 1:38 PM a backhoe carrying oxygen bottles to the work train approached the worksite. The machine operator contacted the RWIC and asked for permission to foul the tracks. Claimant initially denied the backhoe's request, but seconds later permitted the backhoe to foul the live track without having a job briefing with the backhoe operator and without Track Authority on the Westbound Main.

After thorough review of the record, the Board finds that there was substantial evidence on the record to prove that Claimant failed to follow the instructions given to him by not one, but two supervisors, who instructed him to obtain exclusive track occupancy rather than a Dispatcher's block through a Track Authority. Claimant not only put the work train crew and the backhoe operator in jeopardy, but also exposed any train crew traveling on the Westbound Main to danger. That charge was proven conclusively.

Further, Claimant, as an RWIC has an obligation to warn new-comers to the work group as to possible hazards. Claimant failed miserably to do so when he didn't have a job briefing with the backhoe operator who was dispatched from a location five (5) miles away and allowed him, at his peril, to foul an unprotected track.

Thus, the Board finds that the charges against the Claimant were proven without any doubt.

We find, however, that the penalty assessed in this matter was excessive. For that reason, the discipline assessed shall be commuted to a forty-five (45) day suspension.

AWARD:

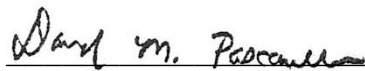
Claim sustained in accordance with the findings.



Richard K. Hanft, Chairman



S. M. Goodspeed, Carrier Member



D. M. Pascarella, Labor Member

Dated at Chicago, Illinois, August 26, 2019