

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6394

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 97
)	
and)	
)	Award No. 97
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 five (5) day actual suspension and a ten (10) day deferred suspension] of Mr. J. Johnson, issued by letter dated July 10, 2017, in connection with his alleged improper performance of duty in that on May 22, 2017 at approximately 2:30 P.M., he improperly removed the ten (10) mile per hour (mph) slow order on Main Two after welding the east cross over frog at CP 285 and left a slow order condition frog point in the track, resulting in trains operating over a ten (10) mph condition at maximum authorized track speed, was capricious, excessive, harsh and unwarranted (System File Johnson 080417/MW-DEAR-17-64-LM-408 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Johnson shall be compensated for all lost time.”

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 nearly ten (10) years' unblemished service at the time giving rise to this dispute. On May 22, 2017, Claimant was assigned as an electric welder near Toledo, Ohio.

Track Inspectors found five (5) frogs with tread conditions below FRA standards and placed a 10 mile per hour slow order on the Main Two (2) track. Claimant was contacted and instructed to correct the defects by welding over the defective areas of the frogs to build them up to acceptable tolerances for FRA standards.

It is undisputed that Claimant made acceptable repairs at CP 281 to the 3a and 3b switches and then went to CP 285 and made repairs to the siding and the 3a and 3b switches there. Claimant reported to his supervisor that he had performed the repairs and Claimant then had the 10 mile per hour slow orders removed from that section of Main Two. Claimant left the property at the normal quitting time.

Shortly thereafter, a Track Supervisor and Assistant Track Supervisor followed up on Claimant's repairs and inspected them for compliance with FRA standards. Four (4) of the five (5) repairs were within the tolerances required by the standards. The supervisors, however, found that at the East Crossover Frog at CP 285 Claimant left a slow order condition frog point in the track. According to the supervisors' testimony at the Investigation, the welds were one-eighth inch shy of being in compliance with the standards. Removing the 10 mile per hour slow order while a reported defect was not repaired to FRA standards could have subjected the Carrier to a willful violation of FRA orders.

The supervisors contacted the dispatcher and had the 10 mile per hour slow order restored and had additional weld applied to bring the defect within acceptable tolerance. Claimant was charged with improper performance of duty for removing the slow order from the track while a slow order condition still existed at the frog point.

After one postponement an Investigation was conducted on the property on June 27, 2017. Claimant testified that he had not checked the height of the weld after completing the repair, but instead took off to do other welds.

Claimant's admission that he did not measure the repair he made upon completion before moving on to make other welds does not rise to the level of negligence, but rather, was carelessness. Nevertheless, Claimant's carelessness on this one occasion, could have subjected the Carrier to a willful violation of FRA orders or worse yet, could have exposed train crews to imminent danger.

In view of Claimant's admission on the record, substantial evidence existed to support the findings on the property. Moreover, the discipline assessed was commensurate with the safety-related nature of the violation.

AWARD:

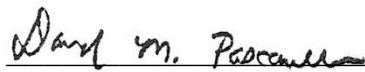
The Claim is denied.



Richard K. Hanft, Chairman



S. M. Goodspeed, Carrier Member



D. M. Pascarella, Labor Member

Dated at Chicago, Illinois, August 26, 2019