

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 196

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Welder R.C. Allen for violation of Norfolk Southern Safety and General Conduct Rules in that he (1) dismounted a boom truck while the boom truck was in motion and (2) that he directed threatening gestures and inappropriate and vulgar language toward Foreman C. Newcomb on June 2, 2010 is unjust, unwarranted, excessive and in violation of the Agreement (Carrier's File MW-DECR-10-36-SG-219).
2. As a consequence of the violation referenced in Part 1 above, Mr. Allen shall be granted the remedy in accordance with Rule 30(d) of the Agreement."

Upon the whole record and all the evidence, after hearing, the Board finds 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 precedent in any other case.

AWARD

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

On the date of the incident in this case the Claimant had over 30 years of seniority with the Carrier and was working as a welder. While working on June 2, 2010 the Claimant was riding in the back of a boom truck and left the vehicle while it was still moving. The Claimant then told the boom truck driver Foreman Newcomb that he should slow down. There is dispute over whether the Claimant used profane language when conveying this message, although the Claimant states even if such language was used, it was not meant to be threatening. There is also a dispute on whether the casual use of profane language in this unit was routine enough that this would be fairly normal shop

talk. In response, Foreman Newcomb advised the Claimant not to use such language toward him (this is not disputed – see Transcript page 57). Later that day, the Claimant was advised by Supervisor Laughlin that he was being removed from service immediately due to these events. The Carrier conducted an investigation based on charges of dismounting a moving boom truck and using vulgar language. The investigation included a hearing on June 17 and July 2, 2010, and the Carrier notified the Claimant via letter on July 20 that he was found guilty of the charges and dismissed from service.

The Carrier notes there is no dispute that the Claimant removed himself from the boom truck while it was still moving, and that he knew it was a violation of General Safety Rule 1071. The Carrier also points out that multiple witnesses heard the Claimant use profane language to the effect of “slow the f*** down” in violation of General Conduct Rule 1. The Carrier holds that routine use of profane language was not part of the culture and professional norms of the unit. In support of this, the Carrier cites Foreman Newcomb’s and Supervisor Laughlin’s testimonies that they never use profanity directed at employees and have not observed other employees engage in such behavior. Any procedural concerns are negated by the fact that the Claimant admitted his conduct violated safety rules. In addition, none of the Carrier’s substantive points come from portions of the transcript that are missing. The Carrier finds that the dismissal of the Claimant in this case is warranted because the incident follows a long record of disciplinary actions including multiple suspensions and discharges.

The Organization does not dispute that the Claimant violated the Carrier’s safety rules by dismounting the moving boom truck before it was completely stopped. However, the Organization contends that the violation was technical in nature and in and of itself would never have risen to the level of requiring punishment. Additionally, the Organization argues that the Claimant’s interaction with Foreman Newcomb was consistent with the gang’s professional and cultural work norms. The decision to remove the Claimant from service came from Supervisor Laughlin - who the Organization maintains is motivated by personal animosity against the Claimant. Finally, the Organization makes a series of procedural objections regarding the fairness of the Claimant’s hearing, given that the transcript has 22 instances of “inaudible” gaps.

On the issue of the Claimant dismounting the boom truck before the vehicle was fully stopped, there is no dispute. The Board finds sufficient evidence in the record to support the allegation that the Claimant used profane language in a hostile away against Foreman Newcomb. Supervisor Laughlin testified (Transcript pages 19, 36) that he observed the Claimant cuss and react in an angry manner towards Foreman Newcomb while observing from about 60 feet away. There was a line of questioning in the record which attempted to establish that Supervisor Laughlin’s had a bias toward the Claimant (Transcript pages 20-30). Upon review of the transcript, the Hearing Officer did not find sufficient evidence to discredit Supervisor’s Laughlin’s testimony and we concur with this assessment. The facts and testimony on the record (see Transcript page 61) seem to suggest use of profanity directed at fellow employees was not routine or normal.

Taken in isolation, even given the seriousness of violating the Carrier's safety rules, the current case would not rise to a level egregious enough to warrant dismissal. However, the Board must consider the Claimant's seniority and previous work record. While the Claimant has extensive seniority, his work record has multiple infractions spanning across the years for the same types of violations as in this case. He has previously been disciplined for over 9 cases of disregard for a variety of safety rules and over 5 times involving various cases of disregard or abusive language towards fellow employees or supervisors. The number and types of infractions in the Claimant's work record, combined with the weight of the evidence that suggests the Claimant again disobeyed safety rules and was abusive towards a supervisor, convinces this Board that the Carrier's decision to dismiss the Claimant is not unwarranted or excessive.

The claim is denied.


M.M. Hoyman
Chairperson and Neutral Member


T. Kreke
Employee Member


D.L. Kerby
Carrier Member

Issued at Chapel Hill, North Carolina on February 10, 2012.