

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 220**

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

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

1. The dismissal of Machine Operator A. Kauffman for violation of Norfolk Southern Corporation's Operating Rule 814 in connection with his failure to stop within one-half the range of vision which resulted in a machine collision is unjust, unwarranted, excessive and in violation of the Agreement (Carrier's File MW-BHAM-10-21-SG-478).
2. As a consequence of the violation referenced in Part 1 above, Mr. Kauffman shall be granted the remedy in accordance with Rule 40(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:

The Claimant began service with the carrier on October 16, 2005 and at the time of the incidents leading to this case was working as a machine operator. On December 6, 2010 the Claimant was with the Timber and Surfacing Gang proceeding to tram their equipment to the work site in Tallapoosa, Georgia. The convey of equipment consisted of (1) the lead piece of equipment, a Mark VI Tamper, (2) the second in line piece of equipment, a Chase/Mark II Tamper, and (3) the claimant was on the third piece of equipment in line. The operator of machine (1) radioed to machine (2) and (3) that he was going to stop. The operator of machine (2) also confirmed that he was in the process of stopping and flashed his lights to warn the claimant directly behind him in machine (3) to

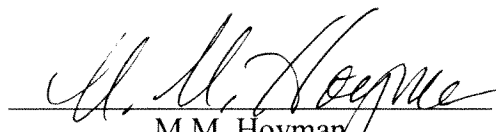
stop. The Claimant failed to stop and collided with machine (2), causing notable damage. An inspection by the Carrier did not reveal any mechanical defects or any other reason why the Claimant's machine would have failed to stop other than operator error. The Carrier's operating Rule 814 requires that all machinery operators maintain an appropriate stopping distance. The Carrier began an investigation including a hearing on January 13, 2011. The Carrier determined the Claimant was guilty of the charges and dismissed him from service via letter dated January 28, 2011.

The Carrier's position is that the evidence is conclusive and shows that the Claimant was at fault for causing the machine collision, which is a clear violation of Rule 814. The Carrier contends the Claimant's defense of not understanding the operator in machine (1) is mitigated by the fact that the operator in machine (2) both radioed and flashed his lights in warning. Additionally, the Carrier dismisses the Organization's procedural arguments on the basis that while the original incident date may have been omitted, there was more than enough contextual information to identify exactly what the notice was about.


The Organization does not dispute the fact that the Claimant failed to stop and caused the resulting damage. The central position of the Organization is that while the violation did occur, the penalty of dismissal is unwarranted because it is disproportionate with the offense given the Claimant's seniority and work record. Specifically the Organization cites SBA No. 1049, Award 214, which it holds has similar facts to the instant case and in which the Claimant was reinstated.

In reviewing the case record, the Board notes that there is no dispute that the Claimant caused the accident and is in violation of the Carrier's Rule 814. The Claimant did testify that he had trouble with the machine previously, but the Carrier's review of the equipment did not reveal any mechanical or technical problems. Thus, there is not enough evidence to suggest mechanical failure in this case. Although we do not view it as a precedent, we find SBA No. 1049 Award 214 as cited by the Organization to be similar to this case with the exceptions that (A) the Claimant in this case has had two letters of counsel for previous violations and (B) the damage caused in this case appears to be greater. Even with two letters of counsel on the Claimant's record, dismissal is too excessive for this set of circumstances and not in accordance with progressive discipline. However, we cannot ignore that the Claimant's work record on safety issues is not completely clear. The Claimant is to be reinstated but without seniority in the machine operator position and without back pay.

The claim is partially sustained.

  
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.