

SPECIAL BOARD OF ADJUSTMENT 1049

Award No. 125

Case No. 125

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Norfolk Southern Railway Company

STATEMENT OF CLAIM:

1. The discipline [forty-two (42) day suspension and disqualification as a BR-BX operator in the A-3 Machine Operator Class] assessed Machine Operator L. D. Lane for his alleged improper performance of duty as operator of ballast regulator on March 14, 2001 and persistent improper operation of the ballast regulator was without just and sufficient cause and in violation of the Agreement (System File MW-GNVL-01-03-LM-073).

2. As a consequence of the violations referred to in Part (1) above, Machine Operator L. D. Lane shall have his record cleared of the incident, have his BR-BX, A-3 Machine Operator seniority restored and compensated for all wage loss suffered.

FINDINGS:

This Board, upon the whole record and all of the evidence, after hearing, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended,; and

2. That the Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction over the parties and the subject matter involved in this dispute.

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

OPINION OF THE BOARD:

The Claimant, who attended the hearing of the Board, had a seniority date of April 11, 1984 and had seniority as a Machine Operator since July 5, 1985. The Carrier asserted that the

Claimant had not performed his duties as a Ballast Regulator Operator in a proper manner on certain dates from January 3 until March 5, 2001 near Haywood, South Carolina. The Organization maintained that the Carrier had failed to inform the Claimant of any of the alleged deficiencies until March 26, 2001 and had pressured the Claimant to forego his seniority to operate the machine. The record reflects that the Claimant refused to do so and that the Carrier then unilaterally suspended the Claimant for 42 days without pay until the completion of an investigation at which time the Carrier disqualified the Claimant as a BR-BX operator in the A-3 Machine Operator Class.

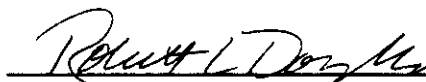
A careful review of the record indicates that in this particular instance the representatives of the Carrier failed to provide timely supervision or feedback to the Claimant when the Claimant purportedly improperly operated the equipment. The record also omits any evidence that the Claimant had received any type of suspension during his entire career with the Carrier. No basis therefore exists in the record as presented to sustain the suspension without pay of the Claimant for 42 days.

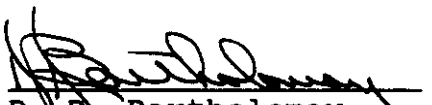
As a remedy, the Claimant shall be disqualified only with respect to the ballast regulator. The Claimant's rights to qualify in the future on the ballast regulator are explicitly reserved. The Carrier shall make the Claimant whole in all respects for the loss of wages and all other benefits including seniority during the period of the improper suspension of 42 days. The Carrier shall remove any reference to the suspension of 42 days from all records concerning the Claimant.

AWARD:

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

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 60 days following the date of this Award.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Organization Member


D.L. Kerby
Carrier Member

Dated: 6/10/02