

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	)	
DIVISION - IBT RAIL CONFERENCE	)	Case No. 198
and	)	
	)	Award No. 198
NORFOLK SOUTHERN RAILWAY COMPANY	)	
	)	

Richard K. Hanft, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. L. Kerby, Carrier Member

Hearing Date: February 25, 2010

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Claimant Kintrell Alexander for the alleged violation of conduct unbecoming an employee in failing to timely report an on-track machine collision at Mile Post 15.5 DW, in the vicinity of Danville, VA on December 15, 2008 and attempting to cover up the collision by making a false statement to Supervisor M. Hunter, at approximately 12:05 P. M., regarding the cause of a cart derailling; making false and conflicting statements concerning an on-duty injury report in that after indicating on December 15, 2008, that you felt no pain you subsequently attempted to take off from work on December 16, 2008, by alleging that you actually had been sore following the collision on December 15; marking off under false pretenses in alleging on December 16, 2008, that you were unable to work because of the on-duty equipment collision of December 15, 2008, although the medical documentation from the December 16, 2008 examination did not find any condition that would have prevented you from operating your assigned tie crane (Carrier's File MW-GNVL-08-44-SG-631).
2. As a consequence of the unjust dismissal, Mr. Alexander shall be made whole and restored to the service of the Carrier, with pay for all lost time, seniority and vacation unimpaired."

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.

AWARD:

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

At approximately 12:05 hours on December 15, 2008 Claimant was operating a Tie Handling Machine with an attached material cart. Claimant's material cart was impacted by the material cart attached to the tie handler working directly behind him with great enough force to jar Claimant, derail the material cart attached to his machine and bend the 3" diameter steel coupling pole on the other machine's material cart. There is no dispute that the collision occurred. Shortly after the collision, the record reveals, Claimant and the other machine's operator attempted to re-rail Claimant's material cart. They were observed by the gang's supervisor who asked Claimant if the cart was derailed because of hitting a cross tie. Claimant testified that rather than reporting the collision, in order to protect his co-worker who had run into him, he told the supervisor that the cart derailed when he hit a cross tie. About an hour later, the operator of the other machine who could not repair the damaged coupling rod, reported the collision and was taken out of service.

A short time after the collision was finally reported to the supervisor on December 15, the supervisor related during his testimony at the investigation, that he asked Claimant if he was okay and the Claimant answered that he was fine. The next morning on December 16 at about 5:50 A.M., the record reveals, the General Division Engineer had a conversation with Claimant about the collision and inquired as to his physical well being and Claimant asserted that he was okay. Later during the gang's safety meeting Claimant was again asked by the General Division Engineer if he was okay and he replied that he was. Later, about 30 minutes after the gang went to work, Claimant reported soreness to his supervisor. The General Division Engineer, hearing that Claimant was reporting soreness approached Claimant and asked how he was feeling. The General Division Engineer testified that Claimant then told him "...I was sore this morning and I was sore yesterday." Claimant was then sent to a medical facility where the doctor diagnosed him as having "Contusion Lumbar." Later that day, Claimant was taken out of service, and the following day provided with a formal out of service letter.

The following day Claimant was notified to report for a hearing on January 12, 2009 which was postponed but eventually held on February 18, 2009. Claimant was charged with conduct unbecoming an employee for failing to timely report an on-track machinery collision and attempting to cover up the collision by making a false statement to his supervisor regarding the cause of the material cart derailling. Additionally, Claimant was charged with making false and conflicting statements concerning an on-duty injury report and marking off under false pretenses. On March 6, 2009 Claimant was advised that he had been found guilty of all charges and was dismissed from service.

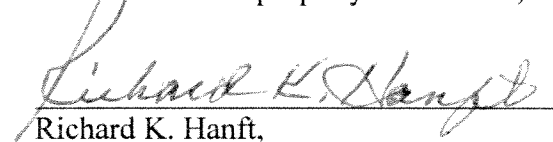
It is clear from the record before us that Claimant falsely reported to his supervisor that his material cart derailed when he hit a cross tie rather than truthfully admitting that the

derailment occurred as a result of an on-track collision. He admitted to it. Moreover, the record reveals Claimant was cognizant at the time that his supervisor asked him what happened that he had a duty to report an on-track collision in a timely manner and he admitted that he did not do so.

Further testimony revealed that Claimant reported to his supervisor that he was not injured on December 15 and again twice to the General Division Engineer that he was not injured on the following morning of December 16. Claimant thereafter, according to the testimony of the General Division Engineer reported to him that he was sore on the morning of the Sixteenth and the day before. Although Claimant denied making that statement, as an appellate body we generally defer to credibility determinations made on the property. In the instant case, the assistant foreman corroborated the General Division Engineer's testimony by testifying that "...Mr. Pressley asked him 'Were you sick? Were you in pain?' And he made the statement that he was hurting...he was hurting the day after that took place and he was hurting that day, and if he wasn't, then he lied." Under these circumstances, we see no reason to disturb the decision on the property to credit the General Division Engineer's testimony over the Claimant's.

In regard to Claimant marking off under false pretenses, Claimant was examined by a doctor and released to work on restricted duty. Those restrictions included no lifting more than 20 pounds and no bending. The Carrier asserts that Claimant's job duties entailed sitting in a chair and working a joystick, neither activity requiring exertion restricted by his physical condition.

In light of the above and the whole record before us, we find that there was sufficient evidence in the record to support the finding that the Claimant was guilty of failing to timely report an on-track collision, making a false statement to his supervisor in order to cover up the collision, making false and conflicting statements concerning an on-duty injury and marking off under false pretenses. Given the severity of the violations proven, we cannot say that the discipline was arbitrary, capricious or excessive. Hence, we find no basis for overturning Carrier's disposition of this case on the property. Therefore, the claim must be denied.


Richard K. Hanft,

Chairman and Neutral Member

Dated at Chicago, Illinois, May 14, 2010


D. L. Kerby
Carrier Member
Dated: 6/18/10


T. W. Kreke
Employee Member
Dated: June 18, 2010