

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION - IBT RAIL CONFERENCE)	Case No. 200
and)	
)	Award No. 200
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 Steve Humphrey for the alleged violation of improper performance of duties concerning THM 06028 operated by you colliding with THM 99037 operated by Employee K. Alexander at Mile Post S82.3 in Millen, GA on April 20, 2009 was harsh and excessive and in violation of the Agreement (Carrier's File MW-ATLA-09-11-SG-202).
2. As a consequence of the unjust dismissal(s) described in Part 1 above, Mr. Humphrey 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.

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

AWARD:

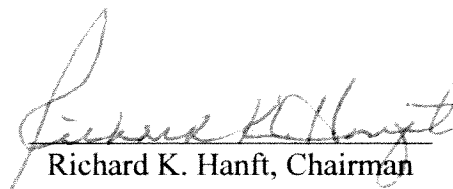
After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:


At approximately 14:00 hours on April 20, 2009 Claimant was tramming a Tie Handling Machine with an attached material cart toward a track siding in order to clear the Main Line.

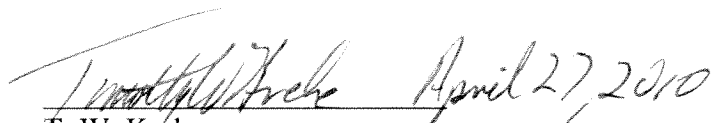
Claimant's machine was the 19th machine in a line tramming toward the siding. Claimant testified that during the approximate two-mile tram to the siding he maintained a distance of about 50 - 60 yards from the machine in front of him. As the machine directly in front of Claimant's approached the switch to enter the siding, its operator brought the machine to a stop as is required to pass through the switch and frog and radioed Claimant to notify him that he was stopping. Claimant fully engaged the brakes on his machine, but nevertheless collided at a speed of approximately fifteen (15) miles per hour with the machine ahead. There is no dispute that the collision occurred. The impact of the collision caused substantial damage to both machines and resulted in a personal injury to the operator of the other machine.

Claimant forthrightly admitted during the investigation on the property that a momentary lapse of concentration caused him to be in violation of Operating Rule 816(a) that requires machinery to be operated with caution when moving over switches; Operating Rule 814(a) that requires on-track equipment to be prepared to stop within half the range of vision; and, GR-26 that requires undivided attention to duty. Hence, given Claimant's admission of responsibility, we must conclude that the Carrier proved the charges against Claimant by substantial evidence. However, under the particular circumstances of the case before us, we find the penalty of dismissal to be excessive. Claimant shall be reinstated to service but without compensation for time out of service and he shall forfeit his machine operator seniority.

Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty days following the date two members of this Board affix their signatures thereto.


Richard K. Hanft, Chairman


D. L. Kerby
Carrier Member 4/27/10

 April 27, 2010
T. W. Kreke
Employee Member

Dated at Chicago, Illinois, March 31, 2010