

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 225**

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 sixty (60) day suspension imposed upon Track Laborer M.A. Carter for excessive absenteeism and failure to protect his assignment from Tuesday, May 18, 2010 through Friday, May 21, 2010 is unjust, unwarranted, excessive and in violation of the Agreement (Carrier's File MW-ATLA-10-15-LM-205).
2. As a consequence of the violation referred to in Part 1 above, Mr. Carter shall receive the remedy prescribed under 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:

The Claimant entered service for the Carrier on August 23, 1990 as a Laborer. The Claimant requested and received permission from a supervisor to be absent on May 17, 2010 in order to tend to a family member who was in the hospital. The Claimant was subsequently absent on May 18, 19, 20, and 21 without requesting permission. The next two days, May 22 and May 23, 2010 were scheduled rest days. Upon return to work on May 24, 2010 one of the Claimant's supervisors asked why he was absent from May 18th through the 21st. The Claimant stated the reason he was absent without contacting a supervisor was that he lost his cell phone and had no other access to a phone during this period. The Claimant was removed from service pending investigation and was charged with excessive absenteeism and failure to protect his assignment. The Carrier completed an investigation including a hearing on June 16, 2010. The Carrier found the Claimant

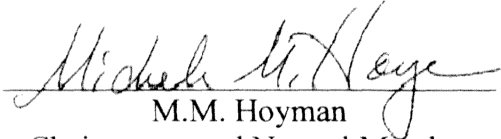
guilty of the charges and assessed a discipline of 60 days actual suspension which began on May 24, 2010 and ended on July 22, 2010.

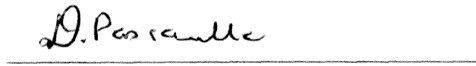
The Carrier notes that the basic facts in this case are not in dispute. The Claimant testified to both knowing that he only received approval to be absent on May 17 and that he was responsible for requesting permission from a supervisor for being absent for any additional days (see Carrier Brief, page 4). The fact pattern clearly establishes a violation of Rule GR-6, which requires all employees to report for work when scheduled unless they receive permission from a supervisor to be absent. The Carrier does not find the Claimant's justification for failing to notify a supervisor to have any merit since it is the Claimant's personal responsibility to comply with the absence policy. The Carrier argues that it is well within management rights to issue a suspension in this case, as in other cases involving chronic absence issues it has issued discipline up to and including dismissal (see Carrier Brief, page 7).


The Organization objects to the suspension on (1) procedural and (2) substantial grounds. (1) Under Rule 40(a), within 20 days after an investigation is complete the Carrier is obligated to send a copy of the transcript to either the Organization or the Claimant. As no copy of the transcript was received during this time, the Organization argues it was rushed into preparing an appeal and did not have full and complete access to the case record (see Organization Brief, page 9). This is a critical violation of the Claimant's rights under the Agreement. (2) It is the Organization's position that the initial suspension pending investigation was wrong. The Claimant was not afforded the opportunity to offer preliminary explanation of his May 18 – May 21 absences (see Organization Brief, page 10-11). The Organization does not dispute that the Claimant only requested permission to be absent on May 17, but argues that it was the custom of T&S Gang employees to only call at the beginning of a week if they planned to be absent for an entire week (see Organization Brief, page 17). Finally, the Organization notes Claimant's absences for the rest of the week were due to a series of unfortunate personal circumstances beyond the Claimant's control. The Claimant's car stopped working and needed repair so he was unable to get to work, and before he could notify a supervisor he lost his cell phone so he was unable to contact anyone.

The Board finds the evidence in the case record is sufficient to support that the Claimant was absent without supervisor approval on May 18 through May 21, 2010. This is a clear violation of the Carrier's attendance policies. We do not find sufficient evidence to support the claim that it was "normal" for members of this work gang to only call in once when intending to be absent for a week. This justification seems unlikely when there is no dispute that the Claimant's initial request was to be absent only on May 17, 2010. Concurrently, we do find sufficient evidence to sustain the Organization's claim of procedural issues related to the hearing. While the Carrier may have failed to provide a transcript within 20 days as required, we do not find enough evidence to show that this failure resulted in a material harm to the appeal process. We have carefully weighed these factors along with the Claimant's extensive record of service in coming to our conclusion. Overall, we find that the suspension of 60 days was excessive. The suspension shall be reduced to 45 days.

The claim is partially sustained.

  
M.M. Hoyman  
Chairperson and Neutral Member

  
D. Pascarella  
Employee Member

  
D.L. Kerby  
Carrier Member

Issued at Chapel Hill, North Carolina on June 20, 2013.