

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 226

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 Carrier's discipline [forty five (45) day actual suspensions] of Mr. W. Murphy issued by a letter dated January 20, 2012 in connection with his alleged failure to follow proper procedures in not removing a shunt before clearing track authority and his alleged improper performance of duty in that on December 14, 2011 he failed to complete the joint occupancy portion of Track Authority #7522 when permitting a signal maintainer to work under his track authority was arbitrary, capricious, unreasonable and in violation of the Agreement (Carrier File MW-GNVL-11-27-LM-483). [Amended by Board as explained below.]
2. As a consequence of the violations referred to in Part 1 above, Mr. Murphy shall receive the remedy prescribed under Rule 30(d) of the Agreement. [Amended by Board as explained below.]

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 Board notes that the original Organization claim as submitted involved two Claimants – one of which (Mr. Gentry) has now retired. As such, we have amended part 1 and 2 of the statement of claimant above to apply only to Mr. Murphy, the remaining Claimant. The Claimant in this case entered service for the Carrier on September 7, 1976 as a Track Laborer and was working as a Foreman on the date of the events which led to

this case. On December 14, 2011 the highway rail grade crossing warning system at Henry McCall Road Crossing, Mile Post 105.73, near Old Fort, North Carolina failed to properly activate when train 135 proceeded through the road crossing. The system uses gates, flashing lights, and a bell on tracks that cross public highways to indicate that a train is nearby and will be soon crossing the area. In this case an activation error occurred, meaning that the system did not turn itself on until the train was almost at the crossing instead of activating well in advance of the train's presence.

The Claimant was in the area with a co-worker (Mr. Gentry) smoothing track when they heard train 132 call out the activation failure over the radio. In accordance with Carrier procedure, the Claimant and Mr. Gentry received track authority from the dispatcher which ensured they could work with protection from train movements in the area around the activation failure. The Claimant and Mr. Gentry then investigated the location of the failure to see if they could identify the problem. After being unable to troubleshoot the issue, they contacted Signal Maintainer Monroe, who had also been working in the area, and requested that he inspect the crossing to determine the reason for the activation failure. Upon arrival Mr. Monroe asked for what is called joint occupancy, which would enable him to inspect the failure under the same track authority provided to the Claimant's work group. After giving Mr. Monroe joint occupancy, the Claimant and Mr. Gentry pulled their machines out of the area and travelled over five miles back to Marion Depot to drop off their machines for the day.

Using a company vehicle, the Claimant and Mr. Gentry travelled back to the crossing where Mr. Monroe was working at the site of the activation failure. At that time Mr. Monroe informed them of the reason for the failure – there was a shunt to the west of the activation switch where the Claimant's gang had been working. Mr. Monroe had found and removed the shunt after realizing it was the reason for the activation failure. Mr. Gentry admitted at that time he had failed to remove the shunt after completing work in that area. Mr. Monroe reported this situation to his supervisor, resulting in a report that is required to be filed by the Carrier to the Federal Railroad Administration whenever an activation failure occurs. Upon further investigation into the incident, the Carrier's officials found that the Claimant had granted Mr. Monroe joint occupancy but did not document this, and then the Claimant proceeded to work away from the group. For his role in the use of the shunt as well as not documenting the joint occupancy, the Claimant was charged with improper performance of duty via letter on December 22, 2011. The Carrier held a formal investigation including a hearing on January 5, 2012. The Carrier found the Claimant guilty and assessed a 45 day actual suspension as discipline.

The Carrier's position is that the Claimant violated multiple rules and procedures which demonstrate a failure to attend to his duties as Foreman. Specifically, the Carrier cites a violation of standard procedure 320-4.01. This regulation provides a procedure to identify and tag a shunt to ensure its proper removal. The Claimant failed to ensure the shunt was properly identified as required by the procedure (see Carrier Brief, page 7). In addition, the Carrier argues the Claimant was in violation of operating rule 750 and 809 which require the filling out of a form for joint occupancy. The Claimant's reason for not filling out this section of the form was that he thought Mr. Monroe was a member of his

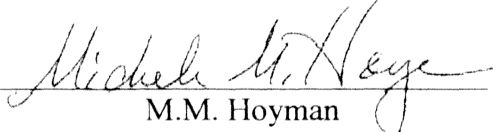
“work group” and thus did not need to be documented as a joint occupant. The Carrier notes this is a serious decision failure as the Claimant’s work group was over five miles away at the Marion Depot (see Carrier Brief, page 9). In addition, even if Mr. Monroe were in the limits of the Claimant’s track authority, Mr. Monroe was not a member of the Claimant’s work group to begin with and thus his joint occupancy should have been noted on the appropriate form. Put together, all these decision making failures on the part of the Claimant are a clear violation of General Rule 26 which requires among other things that no employees engage in activity that jeopardizes the safety of themselves or others. The Carrier refutes the Organization’s position that the work gang was short-handed, which was offered as a contributing factor to the mishandling of the shunt. In rebuttal, it references the testimony of Assistant Division Engineer Meeks and Supervisor Bland which stated that only one person is required to install a shunt so the size of the work group at the time is irrelevant (see Carrier Brief, pages 11-12). For all these reasons, the Carrier maintains the decision to suspend the Claimant was both appropriate and warranted.

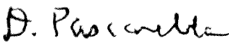
The Organization argues that the Claimant was not responsible for the installation or removal of the shunt. The Organization notes that in the Carrier’s assertion that the Claimant is responsible for ensuring the shunt is removed correctly, it failed to specifically cite what rule was violated, especially as Claimant was not the employee directly responsible for this (see Organization Brief, page 11). The Organization argues the Claimant as foreman “was not responsible for every error that might have been committed by any employee under his charge” (see Organization Brief, page 12). It also argues that Mr. Monroe, as part of the Claimant’s work group, did not need to be added as a joint occupant. The Organization relies on the testimony of Supervisor Bland, who stated that all employees working within an assigned track authority are considered to be within the same work group (see Transcript, pages 85-87). Furthermore, Assistant Division Engineer Meeks testified that members of the same work group do not need to be written down on the form as joint occupants (see Transcript, pages 59-60). There is no dispute that, even if the Claimant failed to fill out a form properly, this is at its worst a technical violation as Mr. Monroe was clearly informed of the track authority limits. Mr. Monroe even testified that he at no point felt endangered and as a matter of fact Mr. Monroe never fouled the track in this case due to the Claimant’s actions (see Organization Brief, page 13). Finally, the Organization’s position is that, even if there is some validity to the alleged misconduct, the suspension of an employee with such a long and satisfactory work record (beginning in 1976) is disproportionate to the offense (see Organization Brief, pages 15-17).

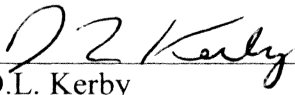
The Board finds sufficient evidence in the record to support that the Claimant is guilty of violating standard procedure 320-4.01, rule 750, and rule 809. However, we do not find that the nature of these violations rises to a level that would constitute a violation of General Rule 26. As Foreman, there is a reasonable expectation that the Claimant should have been aware of the need to remove the shunt and should have ensured an employee under his supervision carried out that job. Although there was much conflicting testimony in the record, it does also appear that Mr. Monroe should have been included as a “joint occupant” under the track authority assigned to the Claimant’s work group.

However, given that Mr. Monroe testified he was well aware of the boundaries of the track authority the violation is mostly technical. In coming to its decision, the Board has carefully weighed these factors along with the Claimant's extensive record of service. On balance, we conclude that the 45 day suspension was excessive. The 45 day suspension shall be reduced to a 30 day suspension for the rule violations as outlined above.

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.