

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 233**

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) days actual suspension] of Mr. C. Hughes issued by letter dated November 2, 2011 in connection with his alleged improper performance of duties as a flagman foreman in that on September 21, 2011 he failed to ensure that all hook bolts were replaced on the bridge ties and failed to actually walk out onto the bridge and inspect the structure to assure that it was safe for train traffic before he released the track authority he had obtained to protect a contractor that was performing repairs on the Neuse River bridge near Mile Post NB30 at New Bern, North Carolina was arbitrary, capricious, unjust, unwarranted, unreasonable and in violation of the Agreement (Carrier's File MW-GNVL-11-16-BB-371).
2. As a consequence of the violation referred to in Part 1 above, Mr. Hughes shall receive the remedy prescribed under Rule 40(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 October 20, 2004 as a Bridge and Building Apprentice and was working as the Flagging Foreman on the date of the events which led to this case. On September 21, 2011 the Claimant was working with contractors who were replacing the pilings that support Neuse River Bridge. When work was completed for the day the Claimant contacted the dispatcher to release his track authority and then left the area. Later that evening Bridge and Building Supervisor

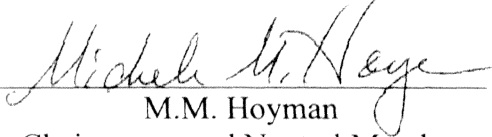
Collins was contacted by Neuse Bridge Draw Tender Swain, who stated he had noticed there were several hook bolts missing from a 30 foot section of the bridge. This created a major safety issue – no trains could safely use that portion of the bridge due to the missing hook bolts. The issue was repaired by the contracting company. The next day Supervisor Collins interviewed the Claimant, who stated he did not go out and visually inspect the hook bolts before giving up his track authority. For these reasons the Claimant was charged with improper performance of his flagging foreman duties via a letter on September 28, 2011. The Carrier conducted a formal investigation of these charges including a hearing on October 20, 2011. The Carrier concluded the Claimant was guilty of the charges and assessed a 45-day actual suspension on November 2, 2011.

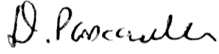
The Carrier's position is that the Claimant clearly failed to properly perform his flagging foreman duties. It cites the testimony of Supervisor Collins which confirms that the Claimant should have physically walked on the bridge and inspected it before releasing track authority and going home (see Carrier Brief, page 5). The Carrier notes there is no dispute that the Claimant knew he needed to perform this inspection because his training specifically included Track Safety Standard 213.11, which requires that the Claimant ensure that the contractors working under his command complied with all federal and Carrier regulations. The Carrier alleges the Claimant is guilty of General Regulation GR-1 because he did not ensure that the hook bolts were replaced on the bridge ties. Additionally, it alleges he is guilty of General Regulation GR-26 because he did not give full attention to his duties and "forgot" a crucial inspection.

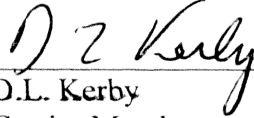
The Organization's position is that the Carrier did not offer enough evidence to demonstrate that the Claimant had a duty to inspect the track in this case. The Organization contends the Claimant had no obligation to inspect the work of the contractors (see Organization Brief, page 5). The fact that the Claimant may have performed inspections of the type the Carrier has described in the past only indicates that he might have previously "gone beyond the call of duty" in completing work "nowhere explicitly called for or suggested by other evidence" (see Organization Brief, page 8). The Organization contends that the Carrier's accusation of a GR-1 violation is an attempt to apply a generic rule regarding safety and is without merit. The Organization argues that the Carrier has admitted the flagging foreman role has "...no specific Carrier rule" that outlines the position's responsibilities. As the Carrier failed to provide any non-speculative evidence to prove its claims, the Claimant cannot be found guilty of the charges.

The Board finds sufficient evidence in the case record to support that the Claimant's actions constituted a failure to properly perform his foreman duties. In not going back to inspect the track, the results could have been disastrous, and there seems to be enough evidence in the record to support the idea that flagging foreman should inspect the work of those under them to ensure compliance with federal and Carrier polices. However, we do not find that the level of misconduct in this case rises to a level which justifies a 45-day actual suspension. The Board reduces the Claimant's assessed discipline to a 30-day actual suspension.

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.