

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 234

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 Carrier's discipline [thirty (30) days ACTUAL suspension] of Mr. D. Powell issued by letter dated October 21, 2011 in connection with his alleged failure to protect his assignment as a track repairman helper when he abandoned his assigned duties of assisting a curve rail gang at Mile Post 456.3 in Spartanburg, South Carolina on September 27, 2011 and asked another employee to perform his duties without authorization from his supervisor and in connection with his alleged failure to follow the instructions of his supervisor when he drove his personal vehicle to the work site after being instructed to travel to the work site with the rest of the gang was arbitrary, capricious, unjust, unwarranted, unreasonable and in violation of the Agreement (Carrier's File MW-GNVL-11-17-LM-372).
2. As a consequence of the violation referred to in Part 1 above, Mr. Powell 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 December 13, 2006 as a Track Laborer and was working as a Track Repairman Helper on the dates of the events which led to this case. On September 27, 2011 the Claimant attended a routine morning briefing wherein he was instructed to travel to the worksite with the rest of the work gang. Later that day, Supervisor Gass travelled to the worksite at about 5:30PM to check on work progress and discovered the Claimant was not present. After determining the Claimant had not received approval to leave work, Supervisor Gass contacted the Claimant on his cell phone at 5:45PM to inquire about his location. The Claimant returned the call at 9:05PM and stated he left work early in his personal vehicle to attend an evening class. Due to these events, the Claimant was charged via a letter on September 30, 2011 with failure to protect his assignment, asking another employee to perform his duties without authorization, and failure to follow supervisor instructions. The Carrier conducted a formal investigation including a hearing on October 13, 2011. The Carrier found the Claimant was guilty of the charges on October 21, 2011 and assessed a 30-day actual suspension.

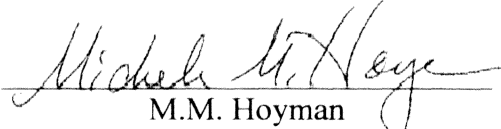
The Carrier's position is that the Claimant is clearly guilty of the charges. That the Claimant failed to protect his assignment by leaving early without permission is supported by the Claimant's own admission at the hearing (see Transcript, page 36). The Claimant's explanation – that "it must have slipped my mind" – only makes the misconduct more egregious (See Carrier Brief, page 6). There was also testimony that the Claimant was specifically instructed to travel to the worksite with a co-worker (Mr. Pena) but discarded those instructions and travelled in his personal vehicle (see Transcript, page 11). Finally, the Carrier's allegation that the Claimant asked another employee to perform his work without authorization is supported by the testimony of Mr. Means (see Transcript, page 22). The Carrier considers this evidence as being sufficient to support that the Claimant violated General Conduct Rule GR-1 (requiring employees to follow instructions from proper authority) and GR-6 (requiring employees to obtain approval before asking others to perform their work) (see Carrier Brief, page 7).

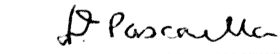
The Organization's position is that the Carrier failed to meet its burden of proof. The Organization cites testimony which demonstrates the Claimant had customarily been allowed the use of a personal vehicle to drive to work and early leave in order to attend night school classes (see Transcript, pages 35-37). Although it admits the Claimant in the instant case failed to get permission, it characterizes this as a single mistake. The Organization further notes that any misconduct which may have occurred was certainly not intentional, as the events in this case are in accordance with the agreement the Claimant had with the Carrier regarding attending night school courses (see Organization Brief, page 6).

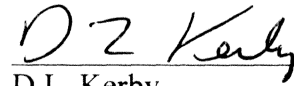
There does not appear to be any dispute in this case about the facts: the Claimant (1) did not protect his assignment in that he left work early without permission, (2) requested another employee to perform his work without permission and (3) traveled to the worksite in a personal vehicle when he was instructed to not do so. For these reasons, we find that the Claimant is guilty of GR-1 and GR-6. However, we find that the level of misconduct in this case does not rise to the level which warrants a 30-day actual

suspension. Although the case record is unclear on specifics, it does appear there was some arrangement between the Claimant and the Carrier to regularly leave work early in his personal vehicle to attend night class. But even if such an arrangement existed, it does not appear as though the arrangement allowed the Claimant to perform the type of actions in this case without explicit supervisor approval or notification. For these reasons, the suspension is reduced to a 15-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.