

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 214

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 dismissal of Claimant James Hughes for the alleged violation of Norfolk Southern Corporation's Operating Rule 814 in connection with his alleged failure to stop his assigned Plasser Tamper PT-0703CAT short of stopped Ballast Regulator BR-07037 BX resulting in a machine collision at Mile Post 222.1 near Fort Valley, Georgia on February 25, 2010 was harsh, excessive and in violation of the Agreement (Carrier's File MW-ATLA-10-05-SG-080).
2. As a consequence of the violation referenced in Part 1 above, Mr. Hughes 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 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

The Claimant was a machine operator for the Carrier on Gang S-12 with about 5.5 years of seniority, and was operating a Plasser American 2X Tamper near Fort Valley, Georgia at the time the events leading to this claim occurred. There is no dispute about the facts in this case. On February 25, 2010 the work crew, consisting of several machine and employees, was tramming to the worksite. The operator of one of the machines began experiencing and equipment problem that caused his machine to stop. The machine operator communicated to the appropriate people behind him that he was stopping which was acknowledged over the radio by all the trailing machine operators except the Claimant. The Claimant did not acknowledge the stop and his machine ended up

colliding with a ballast regulator at a speed of about 1 mile per hour. No one was injured, the equipment sustained minimal damage, and the event was appropriately reported to a supervisor. The repairs were minor enough to be made on site, after which work continued as scheduled. The manager of the Claimant's direct supervisor instructed the Claimant's supervisor to remove him from service, which was done after the work day was completed. Upon removal from service the Carrier conducted an investigation and determined that the Claimant's actions constituted a violation of Operating Rule 814 (failure to stop). The Claimant was dismissed from employment on April 7, 2010.

The Carrier's argument in this case is that there is no dispute that the Claimant failed to stop in time, and that failure to stop is a violation of a company rule of a significant enough magnitude to warrant dismissal. The Carrier points out that when the lead Operator radioed behind him of the stop, the Ballast Operator following him was able to stop his machine without problems. The Tamper Machine was behind the Regulator, but did not stop on time. The Carrier further points out that the investigation showed no mechanical problems with any system that could have impaired the Claimant's ability to stop on time.

The Organization argues that while there is no dispute that the Claimant caused the incident, the penalty of dismissal is unwarranted. In support of this argument the Organization notes the Claimant's otherwise excellent work record. Of particular note in the Organization's argument against dismissal is SBA 1049 Case 200, in which both the Organization and the Carrier were involved previously. In SBA 1049 Case 200 the Claimant fully engaged breaks but caused a collision of significant damage, and in the investigation the Claimant admitted that the collision was due to a momentary lapse of concentration. The Board in SBA 1049 Case 200 ruled that the dismissal penalty was too severe and reinstated the Claimant without back pay and with a forfeiture of seniority.

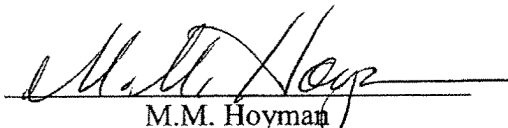
The Board considered the fact that the Claimant had an excellent work record and prior to this incident was only one of three who were trusted enough to operate the type of machine being operated at the time of the accident. There was no production time lost and there were minimal costs associated with the repair. In the present case there is no dispute that the Carrier has proven the Claimant to be guilty of Rule 814, but the question is whether the dismissal penalty is too severe for the circumstances. Although SBA 1049 Case 200 is not considered a precedent in any way, the Board notes a close similarity between the cases which lends credence to this argument used by the Organization that the penalty of dismissal is excessive. The Board notes that in Case 200, the damage caused was significant in contrast to the instant case where the record shows only minor damage, and still in Case 200 the Board found dismissal to be excessive.

The Claimant clearly failed to stop in this case, and the Carrier has correctly charged him with a rule that the Claimant admits was broken. Concurrently, we must consider several mitigating factors. First, the lapse in concentration all things considered was minor – the collision occurred but repairs were made on site, and the record suggests that the work scheduled that day was completed without much delay. The Claimant continued to operate the machine after the incident without incident or problem. In

addition, the Claimant's work record of over five years with the Carrier is good. Considering these facts, the Board finds that the dismissal of the Claimant was excessive.

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows: The claim is sustained partially. The Claimant shall be reinstated to service with all seniority but without back pay for time out of service.

The claim is sustained in part.


M.M. Hoyman
Chairperson and Neutral Member


T. Kreke
Employee Member


D.L. Kerby
Carrier Member

Award Date: June 30, 2011