

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 215

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 Lukus Mofield for the alleged violation of Norfolk Southern Corporation's Operating Rule 814 in connection with his alleged failure to stop his assigned front broom TPBC-18 short of stopped Vehicle 205653 resulting in a machine collision at Mile Post 158.8A near Loudon, Tennessee on March 2, 2010 was harsh and excessive and in violation of the Agreement (Carrier's File MW-CN-10-04-SG-085).
2. As a consequence of the unjust dismissal described in Part 1 above, Mr. Mofield 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 employed by the Carrier from March 13, 2008 until his dismissal on May 4, 2010. At the time of the events that lead to this claim, the Claimant was a laborer for the Carrier and was assigned to operate the front broom machine TPBC-18. On March 2, 2010 the Claimant was operating the broom machine when he was notified by Track Supervisor Smith via radio that his vehicle, which was in front of the Claimant's machine, was stopping. The Track Supervisor's notification that his vehicle was stopping occurred when there was a distance of about 500-600 feet between the Supervisor's vehicle and the Claimant's machine. The Claimant did not attempt to stop his machine until he was 100-150 feet away from the vehicle. At that point, the distance between the machine and the stopped vehicle was too small to avoid a collision, even

though the Claimant engaged the brake, emergency brake, and shut off the engine. The resulting collision caused moderate damaged to the stopped vehicle. After the incident the Claimant was removed from service. On May 4, 2010 the Carrier concluded its investigation and dismissed the Claimant for violating Rule 814 (failure to stop). At the investigation hearing, the Claimant accepted full responsibility for his failure to stop.

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 the Track Supervisor appropriately communicated to the Claimant that he was stopping and that the Claimant understood that meant he should begin procedures to stop the vehicle immediately.

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 Claimants otherwise excellent work record. Of particular note in the Organization's argument against dismissal is the ruling in SBA 1049 Case 200, in which both the Organization and the Carrier were involved previously. In that case the Claimant fully engaged the brakes 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. 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 appropriate given the circumstances. Although SBA 1049 Case 200 is not considered a precedent, the Board notes a material similarity between the cases which lends credence to the argument used by the Organization that the penalty is disproportionate to the offense committed.

In coming to its decision, the Board notes that a reduction in the severity of the penalty would be more in line with progressive discipline than the current penalty. The Claimant clearly failed to brake in time in this case, and the Carrier correctly has charged him with a rule violation, which the Claimant admits he violated. Concurrently, we must consider several mitigating factors. The collision caused moderate cosmetic damage to the Supervisor's vehicle and did not damage the Claimant's machine. The Claimant took direct responsibility for the action and made no attempt to redirect blame. Besides this issue, the Claimant's 18 month work record with the Carrier was 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 Claimant shall be reinstated to service, with his machine operator seniority preserved, but without back pay.

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