

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 216

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 Eddie Huntley for the alleged violation of Norfolk Southern Corporation's Operating Rule 814 in connection with his alleged failure to stop his assigned backup Tamper ET-94016S short of stopped MARK VI Tamper ET-09008J6J resulting in a machine collision at Mile Post 151.2H near Atlanta, Georgia on March 2, 2010 was harsh and excessive and in violation of the Agreement (Carrier's File MW-ATLA-10-07-SG-087).
2. As a consequence of the unjust dismissal(s) 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

At the time of the events that lead to this claim, the Claimant was a machine operator for the Carrier with over 20 years of service and was assigned to operate a backup tamper machine near Atlanta, Georgia. On March 2, 2010, the Claimant's machine collided with another machine at the worksite at a very low speed. After the incident the Carrier began an investigation. At the investigation hearing, the Claimant admitted that the collision occurred (although he described it as a "tap" and not a "collision"). The Claimant stated the collision was from a simple error of judgment regarding how much room he needed to stop the machine. The Claimant also admitted that the incident was a violation of Operating Rule 814. As a result of its investigation, the Carrier dismissed the Claimant for violating Operating Rule 814.

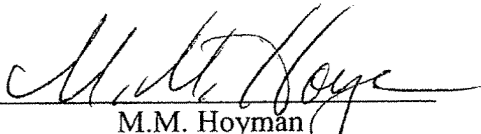
The Carrier's argument in this case is that there is no dispute that the Claimant failed to stop in time, and that failure to stop is a violation of a company rule of a significant enough magnitude to warrant dismissal. The Carrier notes that the Claimant admitted the violation and also admitted that the brake lights of the vehicle in front of him were working and that the brake systems on his machine were working fine that day. Given the circumstances, the Carrier maintains there was no justifiable reason for the collision.

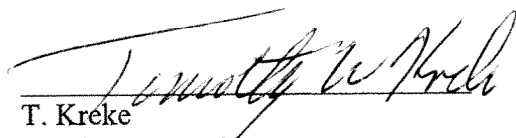
The Organization argues that while there is no dispute that the Claimant caused the incident, the penalty of dismissal is unwarranted. In support of this argument the Organization notes the Claimant's otherwise excellent work record. Of particular note in the Organization's argument against dismissal 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 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 that the penalty of dismissal was disproportionate given the type of rule violation that occurred.

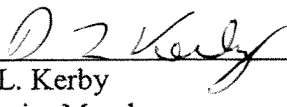
The Claimant clearly failed to stop in this case, and the Carrier correctly has charged him with a rule that the Claimant admits was broken. Concurrently, we must consider several mitigating factors. The Claimant has an extensive record of service with the Carrier, over 20 years of seniority without any other notable incident in his work record. The Claimant took full responsibility for the incident. The damage caused by the collision was very minor, and no one was injured. Considering these facts, the Board finds that the dismissal of the Claimant was excessive. Further, given the circumstances of the case and the notable seniority of the Claimant, the Board finds the time between removal from service and reinstatement to be extraordinary and unusual. An effective suspension of one year is sufficient enough discipline in this case. As such, the grievant is to receive back pay for any time greater than 1 year of suspension (March 2, 2010 through March 2, 2011). Thus, we award back pay beginning from March 3, 2011 until the date at which the Claimant is reinstated.

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows: The grievant shall be reinstated with all seniority, and shall receive back pay from the date of March 3, 2011 until his date of reinstatement.

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