

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1048

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 217
)	
and)	
)	Award No. 217
NORFOLK SOUTHERN RAILWAY COMPANY)	
(Former Norfolk and Western Railway Company))	

Richard K. Hanft, Chairman & Neutral Member
D. M. Pascarella, Employee Member
D. L. Kerby, Carrier Member

Hearing Date: July 25, 2017

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline [thirty (30) day actual suspensions] of Messrs. J. Vaughn, Jr. and M. Franklin, issued by letters dated August 30, 2013, in connection with their alleged conduct unbecoming employees and improper performance of duty, in that they allegedly played a culpable role in the damage of company property, were imposed without the Carrier having fulfilled its burden of proof (Carrier's Files MW-ROAN-13-31-SG-380 and MW-ROAN-13-32-SG-381-NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimants J. Vaughn, Jr., and M. Franklin shall be paid for all lost time with their seniority and vacation rights unimpaired."

FINDINGS:

Upon the whole record and all of the evidence, after hearing, the Board finds that 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 a precedent in any other case.

AWARD:

It is undisputed that on July 29, 2013, a window in the locker room door at the Roanoke Material Yard was broken. After looking into the matter Material Yard Manager M. A. Wolfe charged the Claimants here, M. A. Franklin and J. T. Vaughn, each with violation of GR 23, Damaging Company Property; SR 1027, Horseplay; and GR26, Attention to Duty – Section (a), concerning damage of Company Property.

Two separate investigations were held on the Property on August 20, 2013 and after review of the records the Hearing Officer announced by letters dated August 30, 2013 that the Claimants had been found responsible as charged and each Claimant was assessed a thirty-day actual suspension.

The Organization filed claims on the Claimants' behalf and this matter progressed through the customary grievance process, including conferencing the claims on the property, to no avail. The matters are now before this Board for final appellate review.

Reviewing the record developed on the property, including the transcripts of the investigations held on the property, the Board finds that the Carrier failed to prove the charges levied against the Claimants by substantial evidence.

While circumstantial evidence can, at times, lead to a clear and convincing conclusion, here, the evidence produced against these Claimants is overreaching and lacked credibility and, hence, the Carrier failed to meet its burden of proof in each of the cases before us.

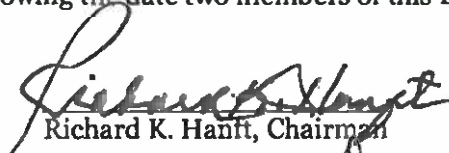
It is axiomatic that the burden of proof lies squarely on the Carrier to demonstrate convincingly that the Employees are guilty of the particular rules violations upon which the disciplinary penalties are based. Here, the Charging Officer read into the record as Exhibit "C" a "Synopsis" of his pre-hearing investigation and an Exhibit "D" that was purportedly contemporaneous notes taken during his investigation into the matter.

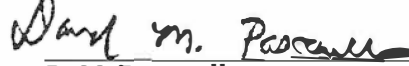
However, employees who those Exhibits reference, upon reviewing the Exhibits, testified that the "Synopsis" was inaccurate and put words into their mouths that they didn't say. Moreover, they testified that "notes" were not taken when they were interviewed.

Hence, since the findings of guilt in both instances are bottomed on evidence shown to lack credibility, the disciplines assessed cannot stand.

Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty days following the date two members of this Board affix their signatures thereto.


D. L. Kerby
Carrier Member


Richard K. Hanft, Chairman


D. M. Pascarella
Employee Member

Dated at Chicago, Illinois, September 5, 2017