

**NATIONAL MEDIATION BOARD**  
**SPECIAL BOARD OF ADJUSTMENT 1048**

Brotherhood of Maintenance of Way Employees	)	
Division – IBT Rail Conference	)	
	)	Case No. 221
And	)	
	)	Award No. 221
Norfolk Southern Railway Company (Former	)	
Norfolk & Western Railway Company)	)	
_____	)	

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. R. Hayman, issued by letter dated September 2, 2015, in connection with his alleged excessive absenteeism and failure to protect his assignment in that he was absent from his assignment without permission or authorization from proper authority and without notifying his supervisor of his need to be absent since Friday, June 19, 2015 and continuing, was unjust, not supported by the testimony brought out at the investigation and not pursuant to a fair and impartial investigation (Carrier’s File MW-DECR-15-56-LM-523 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Hayman shall be allowed to return to work with all rights and privileges.”

FINDINGS:

Special Board of Adjustment Board 1048, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other cases.

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant in this matter was regularly assigned to an electric welder/CDLB position in the Bement, Illinois Electric Welding Gang. Claimant had seniority dating back to May 28, 2011. On Friday, June 19, 2015 Claimant failed to report for duty and protect his assignment. Claimant did not contact his supervisor to request permission to be absent. No Carrier official has heard from Claimant since Thursday, June 18, 2015.

On July 1, 2015 a letter was issued citing Claimant to an investigation for failure to protect his assignment and being continually absent since June 19, 2015. The investigation occurred on August 20, 2015 and Claimant failed to appear, although he was represented by the Organization. At the hearing the fact that Claimant was, and had been since June 19, 2015 incarcerated was made known. The investigation proceeded *in absentia* and Claimant was found responsible for excessive absenteeism and failure to protect his assignment. As a result of the findings, Claimant was dismissed from service by letter dated September 2, 2015.

The Organization maintains that the discipline assessed cannot stand because Claimant was denied his contractual right to a fair and unbiased hearing in that the investigation was held *in absentia* even though evidence of Claimant's inability to attend the investigation was made known to the Carrier and the Organization objected to the holding of the investigation at that time.

Rule 30 of the Parties Agreement, as modified by a Memorandum of Understanding of the System Discipline Rule provides, in relevant part:

"...If the charged employee fails to attend the duly scheduled investigation, without having provided evidence of good cause for such failure to attend, the Carrier may proceed with the investigation in absentia and such proceeding in absentia shall not constitute the basis for any claim with respect to such employee's right to contractual due process..."

Moreover, a charged employee's incarceration has been held not to constitute cause for failing to appear at an investigation. *See* 3 NRAB Award 24339, BRS v. SCLRC (Petersen).

Hence, the Organization's argument that Claimant was denied his right to a fair and unbiased hearing must fail.

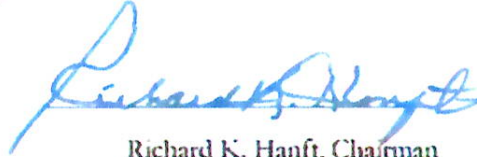
The Board can find no basis to disturb the decision made on the property. The Claim is denied.

Special Board of Adjustment No. 1048

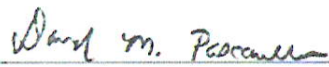
Award No. 221

AWARD:

The Claim is denied.



Richard K. Hanft, Chairman



D. M. Pascarella, Employee Member



D. J. Kerby, Carrier Member

Dated at Chicago, Illinois February 7, 2018