

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT 1048

Brotherhood of Maintenance of Way Employees)	
Division – IBT Rail Conference)	
)	Case No. 223
And)	
)	Award No. 223
Norfolk Southern Railway Company (Former)	
Norfolk & Southern 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 [thirty (30) day actual suspension] of Mr. K. Akers, issued by letter dated June 14, 2016, in connection with his alleged conduct unbecoming an employe in that on May 11, 2016, he impersonated a Company officer to obtain confidential information for personal gain when he contacted Evans Construction to verify dates and the number of hours the company worked on Norfolk Southern property was harsh, excessive and unfair (Carrier File MW-BLUE-16-48-LM-517 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant K. Akers shall be made whole for all lost time, wages, vacation and 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 had nineteen (19) years seniority and was employed by Carrier as a Track Patrol Foreman. Claimant does not deny that on May 11, 2016 he made a telephone call to Evans Construction Company. Claimant testified that he identified himself by name, stated that he was a foreman for the Norfolk Southern and inquired about the dates that the company had performed saw cutting for the Norfolk Southern.

The secretary at Evans Construction Company that received Claimant's call produced a written statement that was admitted to the record claiming that Claimant called, identified himself by name and stated that he was a "supervisor for Ricky Lee" before requesting the information.

May 11, 2016 was a Wednesday and it is undisputed that Claimant had the following three (3) workdays off for FMLA-protected leave. When Claimant returned to work on Monday, May 16, 2016, before he could even get out of his car, he was approached by two Carrier officers and informed that he had been taken out of service and to leave the Carrier's property.

Claimant was summoned to an investigation that was conducted on June 1, 2016. He was charged with conduct unbecoming an employee in that on May 11, 2016 he impersonated a Company officer to obtain confidential information for personal gain when he contacted Evans Construction to verify dates and number of hours the company worked on Norfolk Southern property. Claimant was advised by letter dated June 14, 2016 that he was found guilty as charged and assessed an actual thirty (30) day suspension.

At the investigation the charging officer admitted that he did not draft the charges lodged against the Claimant and could not remember whether he signed the charges or whether the letter was stamped with his signature, never questioned the Claimant about the incident, went on vacation and had his assistant remove Claimant from service.

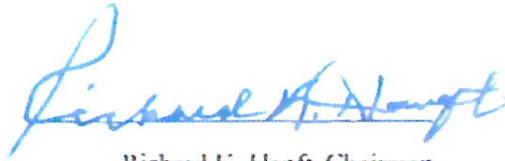
The main evidence submitted at the investigation were two typed statements from Evans Construction's secretary, who was not present to be cross-examined about the statements. In summary, the statement relating to Claimant's phone call said he called Evans Construction, spoke to the secretary, identified himself by name, stated that he was a "supervisor for Ricky Lee" and inquired about dates that the company had done saw cutting for the Carrier.

Aside from the distinction whether Claimant said he was a "supervisor for Ricky Lee" or whether he stated that he was a "foreman for the Norfolk Southern" there is no dispute. Claimant readily admitted to making the call and requesting the information. Claimant, his testimony affirms, was trying to ascertain specific dates that the contractor performed work for the Carrier in order to rebut a rejected time claim. Claimant has a contractual right to file such claims.

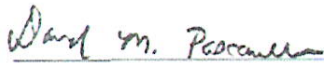
The discipline assessed cannot stand. There were statements entered into the record upon which the hearing officer relied that were of spurious probative value. Carrier failed to meet its burden of proving guilt by substantial evidence. The claim is sustained.

AWARD:

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



Richard K. Hanft, Chairman



D. M. Pascarella, Employee Member



D. J. Kerby, Carrier Member

Dated at Chicago, Illinois February 10, 2018