

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT 1048

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| Brotherhood of Maintenance of Way Employees |) | |
| Division – IBT Rail Conference |) | |
| |) | Case No. 224 |
| And |) | |
| |) | Award No. 224 |
| 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 (time served actual suspension that began on November 3, 2015 and ended at 11:59 P.M. on January 10, 2016) of Mr. J. Jordan, issued by letter dated January 6, 2016, in connection with his alleged violation of Rule 2(b) in that he was observed by Carrier supervisors sitting in a slouched position with eyes covered on November 2, 2015 during the morning meeting at approximately 7:15 A.M. and again in a company vehicle near CP Attwood at approximately 2:00 P.M. and; conduct unbecoming an employee in that he made inappropriate, threatening and unprofessional comments to Track Supervisor J. Muuse on November 2, 2015 at approximately 2:30 P.M. in the supervisor’s office in Crewe, Virginia was in violation of time limit provisions of Rule 30 of the current Agreement between NS Railway and its employees represented by the Brotherhood of Maintenance of Way Employees (Carrier’s File MW-ROAN-15-56-LM-908 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Jordan must now receive all back pay and be otherwise made whole for all losses incurred.”

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 thirty-three (33) years seniority and was assigned as an Assistant Foreman on November 2, 2015 when the conduct that he was disciplined for took place. Claimant's specific assignment on that day was piloting and providing track protection for the back-up tamper.

Claimant was charged with two (2) counts of violation of Operating Rule 2 (b) that prohibits sleeping or sitting in a slouched position with eyes covered at both the 7:00 a. m. morning meeting and later around 2:00 p. m. at C. P. Attwood. He was also charged with conduct unbecoming an employee for words exchanged when he was removed from service.

Relative to the first accusation that Claimant was in violation of Operating Rule 2 (b), the charging officer testified that at approximately 7:15 a.m. during the morning meeting he observed Claimant sitting in a slouched position with his head in his hand with his eyes closed. The charging officer recalled that he hollered "wake up, Jesse" to which Claimant immediately responded "I'm not asleep".

Claimant denies that he was sleeping or in a posture prohibited by the rule. Claimant's denial was corroborated at the investigation by five witnesses who were present at the meeting, including the Assistant Track Supervisor. The Board finds that the Carrier failed to prove this violation by substantial evidence.

After that meeting concluded and the forces went to their daily assignments, the charging officer contacted Carrier's Labor Relations Department and a letter of counsel was prepared to be given to Claimant regarding his alleged rule violation at the morning meeting. Around 2:00 p. m. the charging officer drove to C. P. Attwood to deliver the Letter of Counsel to Claimant. He instructed his Assistant Track Supervisor to follow him to be a witness to him delivering the letter.

The record reveals that when the track supervisor approached the Carrier vehicle that Claimant was in, he noticed Claimant was reclined in the driver's seat sleeping. The assistant track supervisor arrived and also witnessed Claimant and testified that Claimant appeared to be sleeping. Claimant awoke about five (5) minutes later and the charging officer instructed Claimant to follow him back to the office.

Claimant, the charging officer and his Assistant Track Supervisor discussed Claimant's inability to stay alert and from the testimony at the investigation, it appears that the conversation became rather loud and profanity-laced. There is a dispute about who was swearing and who was not, but the Assistant Track Supervisor testified that the foul language was not directed at his supervisor, but more in the form of just letting off steam.

While it is uncontroverted that a heated discussion took place, the Board believes and the record supports, that the things said were not directed at Claimant's supervisor and not meant to be disrespectful or threatening toward the supervisor.

There is no doubt, however, after reviewing the record that claimant violated Rule 2 (b) when he was sleeping while on duty at C. P. Attwood at 2:00 p.m. Sleeping on duty in the railroad industry is a very serious offense, even more so when the employee is supposed to be providing track protection for other employees. Even if the Carrier did not prove that Claimant violated the rule by sleeping or being inattentive at the morning meeting and that the verbal exchange in the office when Claimant was taken out of service crossed the line of treating proper authority with due respect, reducing Claimant's discipline as being excessive in view of such mitigating factors as his long tenure and lack of previous similar discipline, to a thirty (30) day suspension would be most generous.

In this instance, however, Claimant was assessed a "time served" actual suspension that began on November 3, 2015 and ended on January 10, 2016. Three weeks of the time served was due to a postponement requested by the Organization. It is only fair to account for the 15 days that Claimant might have earlier been returned to service, but for the postponement.

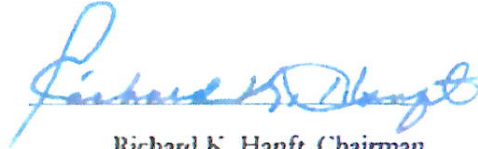
The Board, therefore, determines that the claim shall be disposed of as follows:

Claimant's suspension shall be reduced to forty-five (45) days out of service. Claimant shall be made whole in every way for time out of service in excess of forty-five days.

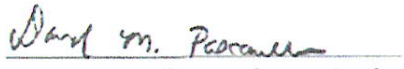

Special Board of Adjustment No. 1048
Award No. 224

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. L. Kerby, Carrier Member

Dated at Chicago, Illinois February 11, 2018