

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT 1048

Brotherhood of Maintenance of Way Employees)	
Division – IBT Rail Conference)	
)	Case No. 225
And)	
)	Award No. 225
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 December 5, 2015 and ended at 11:59 p.m. on February 7, 2016, plus revocation of Claimant’s Roadway Machine Operator seniority on the Eastern Region and his DPG Machine Operator seniority) of Mr. K. Via, issued by letter dated February 5, 2016, in connection with his alleged improper performance of duty in that at approximately 3:20 P.M. on December 4, 2015 while he was operating Ballast Regulator BR 30038BX near Mile Post R59.0 on the Virginia Division, he failed to stop within half the range of vision and maintain a vigilant lookout as required by Norfolk Southern Operating Rules and as a result, collided with a hi-rail truck, causing significant damage to both vehicles was arbitrary, excessive and not pursuant to a fair and impartial investigation (Carrier’s File MW-ROAN-15-61-LM-988 NWR).
2. As a result of the violation referred to in Part 1 above, Claimant K. Via shall be compensated for all lost wages and privileges unimpaired.”

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 working as a Ballast Regulator Machine Operator along with a Tamper on the smoothing gang on December 4, 2015 at a road crossing at M. P. R59.0. When the pair finished working on the crossing, they were to tram their machines north toward Payne to tie up for the night. They communicated the same over the radio.

Unbeknownst to them, an Assistant Track Supervisor ("ATS") and an Operations Supervisor Trainee were performing track inspections southward from Payne to M. P. 59 in a hi-rail vehicle. The ATS contacted the RWIC responsible for the track authority where the smoothing gang was operating, briefed with him and received joint occupancy for the track.

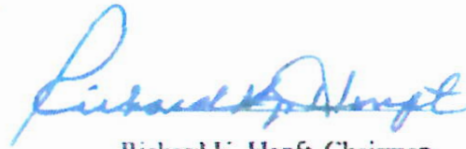
The ATS communicated over the radio that "I'm in the clear and headed to Payne". The ATS did not tell the RWIC he was setting on at Payne and backing north. The ATS should have communicated with the smoothing gang about his track activity and location. Claimant radioed twice that he was heading to the clear. The two vehicles collided with one another, travelling between 15 – 20 miles per hour about 1400 feet north of the crossing at M. P. 59. Three people were hospitalized and several thousands of dollars in damage was sustained by the two vehicles.

Claimant was charged with improper performance of duty in that he failed to stop the Ballast Regulator within half the range of vision and failure to maintain a vigilant lookout.

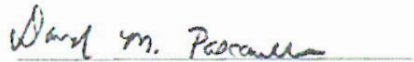

Although the Board determines that the Assistant Track Supervisor, by not communicating his intentions, location and track activity, was largely responsible for this collision, it cannot be said that Claimant was not responsible for some contributory negligence. Claimant admitted that he was turned around looking in the opposite direction of travel for five (5) seconds immediately preceding the collision and never saw the hi-rail vehicle coming. Moreover, Claimant was unable to bring the Ballast Regulator to a stop within half his range of vision. Under the particular circumstances of this dispute, the Board determines that Claimant's suspension was excessive considering the division of responsibility and shall be reduced to ten (10) days. Claimant is to be made whole in all ways for time out of service in excess of ten (10) days suspension. Claimant's Roadway Machine Operator and DPG Machine Operator seniorities shall be restored immediately.

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 12, 2018