

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1048

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
DIVISION – IBT RAIL CONFERENCE	)	
	)	Case No. 229
	)	
	)	Award No. 229
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER	)	
<u>NORFOLK &amp; WESTERN RAILWAY COMPANY</u>	)	

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

**STATEMENT OF THE CLAIM:** “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (actual suspension of time served that began on January 12, 2017 and will end at 11:59 P.M. on February 26, 2017) of Mr. J. Maxfield, issued by letter dated February 23, 2017, in connection with his alleged conduct unbecoming an employe, in that on Wednesday, January 11, 2016 (sic), he engaged in inappropriate and offensive conduct while riding in a Carrier-owned: (a) boom truck near Christiansburg, Virginia; and (b) six (6) man vehicle on Interstate 81 near Christiansburg, Virginia was harsh and excessive, an abuse of the discipline process and not pursuant to a fair and impartial investigation (Carrier’s File MW-BLUE-17-04-SG-034 NWR).
2. The Carrier’s discipline (actual suspension of time served that began on January 12, 2017 and will end at 11:59 P.M. on February 26, 2017) of Mr. J. Phillip, issued by letter dated February 23, 2017, in connection with his alleged conduct unbecoming an employe, in that on Wednesday, January 11, 2016 (sic), he engaged in inappropriate and offensive conduct while: (a) operating a Carrier-owned six (6) man vehicle near Christiansburg, Virginia and (b) operating a Carrier-owned six (6) man vehicle in an unsafe and reckless behavior near Christiansburg, Virginia was harsh and excessive, an abuse of the discipline process and not pursuant to a fair and impartial investigation (Carrier’s File MW-BLUE-17-05-SG-035).
3. The Carrier’s discipline (actual suspension of time served that began on January 12, 2017 and will end at 11:59 P.M. on February 26, 2017) of Mr. A. Morrow, issued by letter dated February 23, 2017, in connection with his alleged conduct unbecoming an employe, in that on Wednesday, January 11, 2016 (sic), he engaged in inappropriate and offensive conduct while riding in a Carrier-owned six (6) man vehicle on Interstate 81 near Christiansburg, Virginia was harsh and excessive, an abuse of the discipline process and not pursuant to a fair and impartial investigation (Carrier’s File MW-BLUE-17-06-SG-036).

4. As a consequence of the violation referred to in Part 1 above, Claimant J. Maxfield shall be restored for all lost time and wages.
5. As a consequence of the violation referred to in Part 2 above, Claimant J. Phillips shall be restored for all lost time and wages.
6. As a consequence of the violation referred to in Part 3 above, Claimant A. Morrow shall be restored for all lost time and wages.”

**FINDINGS:**

Special Board of Adjustment No. 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 precedence 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:

The Board's review of the record leads to the undeniable conclusion that substantial evidence of guilt was established clearly and convincingly at the investigation on the property. Both Claimants Morrow and Maxfield admitted to “mooning” Supervisor Conrad as the six-man welding truck passed by his personal vehicle on Interstate 81 on Wednesday, January 11, 2016.

In regard to the charge against Claimant Phillips of operating a Carrier vehicle in an unsafe and reckless manner, the Claimant's own testimony as well as the contemporaneous written statements of employees who witnessed the event and their testimony at the investigation proved that Claimant Phillips operated the six-man welding truck as it passed Supervisor Conrad's private vehicle so as to allow his co-workers to moon the supervisor. Supervisor Conrad testified that he was exceeding the speed limit when he was passed by the Carrier's vehicle. There can be no argument then that the Carrier's vehicle was exceeding the posted speed limit.

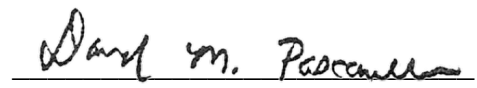
The Board's review of the record further found no procedural due process issues. Nor do we find that the penalties assessed were arbitrary, capricious or excessive. Accordingly, the Board can find no reason to disturb the discipline assessed on the property.

**AWARD:**

Claim denied.

A handwritten signature in cursive script, reading "Richard K. Hanft".

Richard K. Hanft, Neutral Chairman

A handwritten signature in cursive script, reading "D. M. Pascarella".  
D. M. Pascarella, Labor MemberA handwritten signature in cursive script, reading "D L Kerby".  
D. L. Kerby Carrier Member

Dated at Chicago, Illinois, November 21, 2018.