

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1048

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	
)	Case No. 230
)	
)	Award No. 230
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
<u>NORFOLK & WESTERN RAILWAY COMPANY</u>)	

Richard K. Hanft, Chairman and Neutral Member
D. M. Pascarella, Labor 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 fifty (50) days} that began on September 14, 2016 and will end at 11:59 P.M. on November 2, 2016 of Mr. C. Webb, issued by letter dated November 2, 2016, in connection with his alleged responsibility for: Reporting to supervision that he made welds on September 6, 7 and 8, 2016 that he did not make; (b) failing to protect his assignment when he was absent without permission or authorization from proper authority and without notifying his supervisor on Wednesday, September 14, 2016; (c) failing to perform his job assignments in not making any welds on September 12 and 13, 2016 and (d) a make-shift seat that was used to transport an employee in the rear of Truck No. 309647 on September 14, 2016, was harsh, unjust and not supported by the current working agreement (Carrier’s File MW-FTW-16-192-SG-873 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Webb shall be paid for all lost time, including overtime, that he was denied as a result of this unwarranted fifty (50) day suspension.”

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:

First and foremost, the Board's review in this matter only concerns two (2) of the four (4) charges referred to in the letter summoning Claimant to an investigation: failure to perform his job assignment when he did not make any welds on September 13, 2016; and, failing to protect his job assignment when he was absent without permission or authorization from proper authority and without notifying his supervisor on Wednesday, September 14, 2016.

The other two charges relative to reporting to supervision that he made welds on September 6, 7 and 8, 2016 that he did not make and a make-shift seat that was used to transport an employee in the rear of Truck No. 309647 on September 14, 2016 the Claimant was found not culpable for on the property.

The first charge alleging that Claimant was responsible for failing to perform his job assignment on September 13, 2016 is without merit. The record shows that the gang Claimant was assigned to was unable to obtain track time on September 13, 2016 so Claimant was re-assigned to make repairs on the gang's shear and truck, which he did.

The other charge concerns Claimant's failure to protect his assignment when he was absent without permission or authorization from proper authority and without notifying his supervisor on Wednesday, September 14, 2016.

Claimant was found guilty of this charge on the property and we agree that he reported off to the wrong person on that day. Claimant's regular supervisor was off on vacation on September 14, 2016. There was a relief supervisor filling in for Claimant's vacationing regular supervisor and that is who Claimant should have requested a vacation day from. Instead, he texted the gang's lead welder and notified him he was taking a vacation day. That was a violation of the rule because Claimant didn't obtain permission to be absent from proper authority.

There are mitigating factors that the Board considers relative to the rather minor technical violation involved here. Claimant in this matter, at the time of the incident, had more than twenty (20) years unblemished service. Given his past service record, the Board believes that if the charging official had confronted Claimant and gotten his side of the story, he may not have been taken out of service. If he had not been taken out of service, Claimant would have received a considerably shorter suspension.

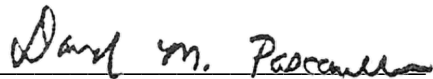
For the above-stated reasons, the Board directs the Carrier to commute the discipline assessed in this matter to a twenty (20) day deferred suspension.

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, Neutral Chairman



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, November 21, 2018