

**NATIONAL MEDIATION BOARD**

**SPECIAL BOARD OF ADJUSTMENT NO. 1048**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)

DIVISION – IBT RAIL CONFERENCE )

) Case No. 231

) Award No. 231

NORFOLK SOUTHERN RAILWAY COMPANY (FORMER )

NORFOLK & WESTERN RAILWAY COMPANY) )

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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 Agreement was violated when, following Mr. R. Hagen’s agreeing to a letter of reprimand via a January 6, 2012 waiver of investigation that, under Rule 30 of the Agreement, specified the maximum discipline that could be imposed for his acceptance of responsibility, the Carrier nevertheless then removed Mr. R. Hagen later that same day from his duties on the S-9 Surfacing Gang and placed him as a Line Maintenance Repairman working out of Decatur, Illinois, which constituted an additional discipline beyond the terms of his waiver which cost Mr. Hagen a substantial amount of overtime opportunities (Carrier’s File MW-CHAR-12-01-ME-078 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Hagen shall once again be allowed to work the S-9 position he held prior and also paid for any lost time including overtime that he would have received had he not been removed from the S-9 Surfacing Gang.”

**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 Organization submits that System Discipline Rule 30 of the NW-Wabash BMWED Agreement was violated when Carrier re-assigned Roadway Equipment Repairman R. Hagan from a Program Maintenance Repairman position on the S-9 Surfacing Gang to working with the Line Maintenance forces on the Illinois Division in its Decatur, Illinois roadway shop. The Organization submits that the Repairman suffered substantial monetary loss as a result of the transfer that amounts to additional discipline.

As Petitioner, the Organization has the burden of proving all essential elements of the Claim by a preponderance of the evidence. Hence, the Organization must prove that it was more likely than not that some rule in the Agreement specifically prohibits Carrier from transferring a various headquartered Roadway Equipment Repairman from a specific Program Maintenance Gang to the Line Maintenance Shop in Decatur, Illinois.

The Organization contends that this specific transfer was an additional form of discipline piled onto the Equipment Repairman after he had already signed a waiver earlier in the day concerning misuse of a Company purchasing card. The Organization submits that once a waiver is signed accepting responsibility, the disciplinary penalty is capped at what was agreed to, in this instance a Letter of Reprimand, as the maximum discipline permitted by the waiver. The Organization argues that the transfer of the Repairman to a less desirable assignment with less overtime availability almost immediately thereafter constitutes additional discipline in excess of what was agreed to in the waiver and is prohibited by System Discipline Rule 30.

The Carrier responds to Petitioner's complaint by asserting that a various headquartered Roadway Equipment Repairman position is subject to change on a weekly or even daily basis and that no rule in the Agreement prohibits re-assigning a various headquartered employee from working on an assigned gang to work in the Line Maintenance Shop. The Carrier insists that assignment of various headquartered employees is management's prerogative and that those positions are intentionally not bulletined to particular locations or gangs in order to preserve managerial discretion to

assign repairmen based on operational needs and circumstances. In this particular circumstance, the Carrier maintained that the Carrier desired to place this particular Repairman in a work environment where he could be more closely supervised and avers that such transfer amounts to no more than the legitimate exercise of Carrier's discretion.

While the Organization reasons that the proximity of the transfer to the Repairman's agreement to a waiver indicates that the transfer was prohibited additional discipline, the Board cannot agree. Management retained the right to transfer the Repairman at any time and thus, transfer cannot be construed as discipline.

Moreover, where the Organization contends that the Carrier's explanation for the transfer was merely pretext, we further cannot agree. The record indicates that Carrier had long considered transferring the Repairman off of the S-9 position due to a lack of that gang running smoothly and personality conflicts. Management decided to pull the trigger and it was within its discretion to do so.

The Board finds that the Organization has failed to carry its burden in showing that the Repairman's transfer was additional discipline rather than a legitimate exercise of managerial discretion. It is within management's prerogative to assign various headquartered employees to positions with more or less direct supervision at its discretion. That is what the correspondence between the parties on this record reflects occurred and there was no rule violation as a result of management exercising its discretion.

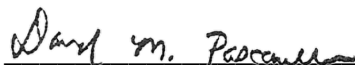
**AWARD:**

Claim denied.

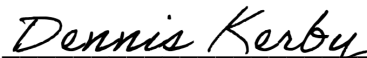


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Richard K. Hanft, Chairman and Neutral Member



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.