

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1048

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	
)	Case No. 232
)	
)	Award No. 232
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 THE CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline [thirty (30) days actual suspension] of Mr. B. Marcum, issued by letter dated December 6, 2016, in connection with his alleged improper performance of duty in that he failed to properly follow lockout/tag out procedures prior to working on Mark IV Tamper (ET07021J6J), in order to make repairs to the Tamper machine located at Elmore Yard in Mullens, WV at approximately 11:00 A.M. on November 15, 2016 was without merit or just cause, harsh, an abuse of the discipline process, excessive and non-instructive (Carrier’s File MW-CHAR-16-03-ME-1033 NWR).
2. The Carrier’s discipline [thirty (30) days actual suspension] of Mr. C. Perry, issued by letter dated December 6, 2016, in connection with his alleged improper performance of duty in that he failed to properly follow lockout/tag out procedures prior to working on Mark IV Tamper (ET07021J6J), in order to make repairs to the Tamper machine located at Elmore Yard in Mullens, WV at approximately 11:00 A.M. on November 15, 2016 was without merit or just cause, harsh, an abuse of the discipline process, excessive and non-instructive (Carrier’s File MW-GNVL-16-58-SG-1042).
3. As a consequence of the violation referred to in Part 1 above, Claimant B. Marcum shall be restored for all lost time and wages.
4. As a consequence of the violation referred to in Part 2 above, Claimant C. Perry 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:

On November 15, 2016 the Chief Engineer of Maintenance Equipment and the Manager of Process Improvement were touring the Elmore Yard in Mullens, West Virginia when they happened upon a repair being performed on a Mark IV Tamper by two Norfolk Southern employees and an outside contractor.

Both Officers testified at the investigation that they came upon the work group, exited their truck and walked up and observed what was taking place.

One of the workmen, a foreman on the T & S 23 Gang was beneath the Tamper near the work head's left cylinder. That Claimant had ten (10) years' seniority at the time. The other Claimant, an Equipment Repairman on the T & S Gang was operating his truck's boom assisting the foreman with trying to thread a nut onto the lift cylinder. That Claimant had almost forty (40) years seniority at that time.

The Chief Engineer observed the work being done and then walked over to the battery box on the machine and observed that the main power switch was in the "on" position and was not locked out.

The Chief Engineer directed the workers to step into the clear and he and the Manager of Process Improvement stepped into the Yard Office to use the phone. Shortly thereafter the two officers met at the machine with the Gang Supervisor and Claimants were removed from service.

Claimants were summoned to an investigation held November 28, 2016 where it was determined that they were both guilty of violating Maintenance of Way & Structures Standard Procedure No. 195 – Lock out/Tag out.

While it seems clear that Lockout/Tag-out is explicitly required by the Maintenance of Way and Structure Standard Procedure No. 2.01 that requires Lockout/Tag-out whenever (b) there is the potential for the energization or startup of machines or equipment or the release of stored energy which could cause injury to employees; and, when (d) an employee is required to place any part of his or her body into an area on a machine or piece of equipment where work is actually performed upon the material being processed (point of operation) or where an associated danger zone exists during a machine operation, the facts and circumstances of this violation are not quite so straightforward.

While it is clear that the foreman did have his body in the gauge of the track and at the point of operation when there was a potential for machine startup or energization it is just as clear that the workers had to run the machine in order to position the work head cylinder. Claimants submitted that they and the machine operator had a job briefing before starting the job. The foreman testified that after positioning the head lift cylinder that the operator of the machine was told to shut the machine down and just hold tight and that he was certain that the parking brake was set, that one head was pinned and the other head was in the ground, that all of the control switches were off, that the travel switch was turned to the travel position, that the neutral gear selector switch was depressed, that the throttle was in idle position, the computer was off and that the Tamper was not running. The only thing on the Norfolk Southern Maintenance Equipment Safety Lockout Procedures specific to machine ET07021J6, the Mark IV Tamper, that had not been performed was turning the master switch to the off position and locking it in the "off" position.

That one failure was sufficient to put the two Claimants in violation of the Maintenance of Way Standard Procedure No. 195. Both Claimants admitted to failing to lock out the Main Switch and acknowledged that their locks should have been on that switch while working on the machine.

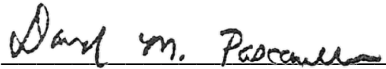
The T & S 23 Gang foreman had a nine and one half (9½) year unblemished record with the Carrier. The Equipment Repairman had thirty-nine and one half (39½) years with no discipline on his record. The Board opines that a thirty days suspension was too severe a penalty for a first time offense for almost fifty (50) years exemplary service. Accordingly, the Board determines that the discipline shall be reduced to a five (5) day suspension with seniority unimpaired in both instances.

AWARD:

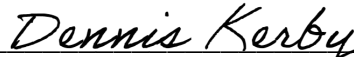
Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty (30) days following the date that two members of this Board affix their signatures hereto.



Richard K. Hanft, Chairman and Neutral Member



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.