

**NATIONAL MEDIATION BOARD**

**SPECIAL BOARD OF ADJUSTMENT NO. 1048**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
DIVISION – IBT RAIL CONFERENCE	)	
	)	Case No. 233
	)	
	)	Award No. 233
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 Carrier’s discipline [actual suspension of thirty-five (35) days] of Mr. R. Kelley, issued by letter dated August 26, 2016, in connection with his alleged conduct unbecoming an employee in that he was discovered: (1) trespassing on company property at Ft. Wayne Roadway Shop, 6405 Nelson Road, Ft. Wayne, Indiana while he was out of service pending the results of a disciplinary investigation; and (2) misused company assets when he used the Carrier’s part cleaner and equipment to clean transmission parts for his personal vehicle, at the Ft. Wayne Road Shop at approximately 2:00 P.M. on Monday, July 18, 2016 was excessive, unjust, unsupported and pursuant to an investigation that was a sham (Carrier’s File MW-FTW-16-166-BB-723 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Kelley shall have his record cleared of all charges associated with this investigation and shall be made whole including pay for all lost time.”

**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:

Claimant in this matter had twenty-eight (28) years' unblemished service prior to being brought to investigation on July 7, 2016. That investigation concerned Claimant being involved in a verbal confrontation with another employee while Claimant was a Carpenter Foreman on the B & B Gang. Claimant was removed from service and that charge was resolved by waiver signed on the property on July 20, 2016 while Claimant was still being held out of service.

Claimant returned to the property on at least two other occasions during the period from when he was removed from service until he signed his waiver: once on July 13, 2016 to turn in paperwork concerning his CDL and again to remit his Purchase Card receipts to his former boss, a Bridge Supervisor, on July 18, 2016.

The conduct and discipline under review in the instant dispute concern Claimant returning to the roadway equipment building later in the day on July 20, 2016 after signing the waiver and using the shop's part cleaner to clean his own personal transmission housing. He was observed using the parts washer by a Carrier officer who spoke to him and thereafter called higher ranking Carrier officers to check whether Claimant was allowed on the property using Carrier assets for his own personal use while out of service. When the superior officers verified that Claimant shouldn't be on the property while being held out of service, charges were filed for conduct unbecoming an employee in that Claimant was 1.) Trespassing and, 2.) Misused Company assets.

An investigation was held in that regard on August 11, 2016 and by letter dated August 26, 2016 Claimant was assessed a thirty-five (35) day actual suspension as discipline.

Upon review of the record and the Parties' submissions, the Board determines that the discipline assessed was excessive given the Claimant's service record, disciplinary record and commensurate with the severity of the misconduct proven. The Board resolves that the discipline assessed shall be reduced to a five (5) day actual suspension.

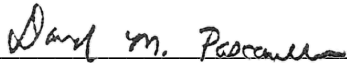
**AWARD:**

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.

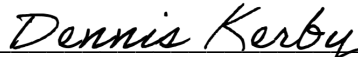


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Richard K. Hanft, Chairman and Neutral Member



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.