

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1048

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
DIVISION – IBT RAIL CONFERENCE)

) Case No. 235

) Award No. 235

NORFOLK SOUTHERN RAILWAY COMPANY)
(FORMER SOUTHERN 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 (time served) of Mr. B. Mullins, issued by letter dated May 3, 2017, in connection with his alleged improper performance of duty and violation of Norfolk Southern Operating Rules in that on Friday March 31, 2017 it was discovered that he was standing on the heads of ties, outside of the rails, near a passing train at approximately 10:00 A.M. near Mile Post N341.8 on the Pocahontas Division on March 1, 2017 was without merit or just cause, harsh, an abuse of the discipline process, excessive, non-instructive and unfair (Carrier’s File MW-BLUE-17-38-SG-241 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Mullins shall be reimbursed for all lost time consisting of twenty-five (25) eight (8) hour days at his applicable rate of pay.”

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 entered the Carrier's service on March 5, 2017. Just four (4) days short of his 10th anniversary of exemplary service, as was attested to by the General Division Engineer and Claimant's immediate supervisor at the investigation, a Rail View video showed Claimant standing on the tie heads outside the gauge of the track as a train passed on an adjacent track in violation of Carrier Operating Rule 761 that provides in relevant part:

b) Where movement on adjacent controlled track is authorized at 25 MPH or less, or 40 MPH or less for passenger trains:

1. On-track equipment may be operated on the occupied track, not exceeding 5 MPH while the train is passing, and on ground work performed exclusively between the rails of the occupied track may continue provided no on-ground work is performed within 25 feet in front or 25 feet behind any On-track, self-propelled equipment or coupled equipment.
2. On-ground inspection and light maintenance work performed exclusively between the rails of the occupied track may continue within 25 feet ahead or behind any "stationary" On-track, self-propelled equipment or coupled equipment provided the operator of the On-track equipment confirms that the equipment :
 - a. Is "stationary", and
 - b. Will not resume On-track movement until permission is received from the affected on-ground workers.

Claimant was summoned to an investigation on April 19, 2017 and when confronted with the evidence explained that that is not what he would normally do, and in this instance, he just made a mistake.

The Organization contends that because Claimant's "mistake" occurred on March 1, 2017 and the films weren't viewed by Engineering Department supervision until March 31, 2017 when Claimant was taken out of service; and, formal charges weren't filed until April 4, 2017 with an investigation thereon held on April 19, 2017, Rule 30 of the Norfolk and Western/Wabash Agreement estops the Carrier from charging Claimant or investigating the rule violation since the violation was viewed by an Assistant Manager in

the Transportation Data Center on March 10, before being sent to the Engineering and Transportation Departments for review.

The Organization submits that the clock started running pursuant to Rule 30 when a Carrier official viewed the images from the Rail View camera on March 10, 2017. That official testified at the investigation that his sole purpose in viewing the footage downloaded from the locomotive was to verify that the tape was indeed that train passing that work zone at that time on that date and not to flag potential rules violations. That task took place, the evidence shows, on the property with the General Division Engineer and four (4) other Carrier Officers reviewing the tape to insure rules compliance. The Board, in this instance, finds no violation of the timeliness requirements of Rule 30 of the Parties' Agreement.

Nevertheless, the Board determines that a thirty-five (35) day suspension given the particular facts in this dispute was excessive. While strict adherence to Roadway Worker Protection Rules can't be stressed strongly enough, this Claimant was a first-time offender with an unblemished record in almost ten (10) years of service to the Carrier. Hence, the Board resolves to reduce Claimant's discipline to a five (5) day suspension.

AWARD:

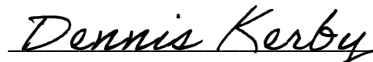
Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty (30) days following the date that two members of this Board affix their signatures hereto.



Richard K. Hanft, Chairman and Neutral Member



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.