

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1048

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)

DIVISION – IBT RAIL CONFERENCE)

) Case No. 236

) Award No. 236

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 (dismissed from all services with Norfolk Southern Railway, later commuted to a time served suspension) of Mr. D. Martin, issued by letter dated December 27, 2017, in connection with his alleged improper performance of duty while installing skirts for C-Belt at Pier 6, in that he crossed over the C-Belt walkway onto No. 2 Loader without the required fall protection on November 16, 2017 was unjust (Carrier’s File MW-BLUE-17-127-BB-856 NWR).
2. The Carrier’s discipline (dismissed from all services with Norfolk Southern Railway, later commuted to a time served suspension) of Mr. W. Adams, issued by letter dated December 27, 2017, in connection with his alleged improper performance of duty while installing skirts for C-Belt at Pier 6, in that he crossed over the C-Belt walkway onto No. 2 Loader without the required fall protection on November 16, 2017 was unjust (Carrier’s File MW-BLUE-17-128-BB-857 NWR).
3. As a consequence of the violation referred to in Part 1 above, Claimant D. Martin shall be immediately reinstated with all back pay, rights and privileges and have all charges expunged from his record.
4. As a consequence of the violation referred to in Part 2 above, Claimant W. Adams shall be immediately reinstated with all back pay, rights and privileges and have all charges expunged from his record.”

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:

Claimants in this matter both entered the Carrier's service in 2008 as Bridge & Buildings ("B&B") Third-Rate Carpenters. On November 16, 2017, Claimants were working with the B&B Gang on a 4-10's, Monday through Thursday night shift working 9:00 P.M. until 7:00 A.M. on the Pier 6 coal loading facility in Norfolk, Virginia. Claimant Martin was still a Third-Rate Carpenter and Claimant Adams was a B&B Electric Welder. They, along with the rest of the gang, were replacing wind skirts on the coal loading facility's conveyor system. A Management Trainee was assigned to the gang to learn what the job entailed and how it is accomplished.

Somewhere between 11:00 P.M. and 2:30 A.M. on that Thursday night, the #2 Loader was parked next to the coal conveyor. The two Claimants needed to go to the ground to access the Company trucks below them. They were working from a walkway protected from fall potential by standard handrail and not requiring personal fall protection equipment. Rather than walk down the walkway to the nearest set of stairs some five-hundred (500) feet away, Claimants climbed over the handrail, traversed the gap between the conveyor support structure and the #2 Loader and went down the stairs on the loader. Once they climbed over the walkway hand rail, Claimants were exposed, unprotected, to the leading edge of a forty (40) foot fall potential in violation of Standard Procedure 127, Section 2.03 requiring the use of a personal fall arrest system when exposed to a fall potential of greater than twelve (12) feet.

Claimant's actions were observed by the Management Trainee who mentioned to the pair that that practice seemed rather unsafe to him. Claimants responded that he would get used to it. The next morning the Trainee discussed what he had seen with his supervisor who took the issue to his supervisor. The two supervisors decided that

Claimants should be removed from service and charged with improper performance of duty for their actions. The following Monday morning, upon their return to work and after the Monday morning safety meeting, Claimants were removed from service. They were summoned to an investigation on December 12, 2017. After review of the evidence adduced at the hearing and consideration of Claimants' past service record, by letter date December 27, 2017 both Claimants were dismissed from service.

The Carrier subsequently reduced the dismissals, on a leniency basis, to an actual suspension of ninety (90) days. The Organization appeals the suspensions assessed.

The Organization's Claims assert that the suspensions assessed were "unjust".

The role of this Board is limited to that of an appellate review of the record established on the property with an eye to whether the record contains substantial evidence to support the Carrier's disciplinary action, whether the Claimant was afforded all due process rights guaranteed under the parties' Agreement and finally, whether the discipline assessed in the event that an employee is found to be responsible for the charged offense is commensurate with the violation proven.

Here, both Claimants admitted that they did just what they were charged with: violating one of the Carrier's "cardinal rules" prohibiting exposure to a fall potential in excess of twelve (12) feet. Both Claimants admitted to it. Both Claimants, as a result, were dismissed. The Carrier subsequently commuted Claimants' dismissals to a "time-served" suspension of ninety (90) days on a leniency basis.

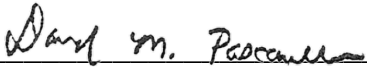
The Board can find no basis on which to disturb the handling of this dispute on the property. The claim is thus denied.

AWARD:

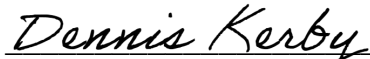
Claim denied.



Richard K. Hanft, Chairman and Neutral Member



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.