

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1048

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 237
)	
and)	
)	Award No. 237
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
NORFOLK & WESTERN RAILWAY COMPANY))	

Richard K. Hanft, Chairman & Neutral Member
D. M. Pascarella, Employee Member
S. M. Goodspeed, Carrier Member

Hearing Date: July 25, 2019

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline [dismissed from the services of Norfolk Southern Corporation and its affiliates, later commuted to an approximate nine plus (9+) month suspension] of Mr. B. Combs, issued by letter dated July 16, 2018, in connection with his alleged: (1) improper performance of duty in that at approximately 2:00 P.M. on Sunday, June 3, 2018, while operating Company Truck No. 308659, he failed to confirm that the way was clear before making a reverse move in the Redgate parking lot in Norfolk, Virginia, resulting in his colliding with Company Vehicle No. 209678; and (2) conduct unbecoming an employee in that on June 3, 2018, he failed to properly report to proper authority that he collided with Company Vehicle 209678 in the Redgate parking lot in Norfolk, Virginia, was unwarranted and uncalled for (Carrier’s File MW-BLUE-18-66-LM-275 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant B. Combs shall be compensated with all back pay, rights and privileges, with seniority unimpaired and shall have all charges expunged from his record.”

FINDINGS:

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant had more than eleven (11) years' service for the Carrier on Sunday, June 3, 2018 and on that day was assigned and working as an Assistant Foreman flagging for Dominion Power on the A Line in Norfolk, Virginia.

At 2:11 PM Claimant texted the Track Supervisor to notify him that the power company was knocking off early on account of rain. Claimant returned to Carrier's office, drove the Carrier's truck into the Redgate parking lot, made a sweeping left turn and began backing the truck up. Claimant stated on the record that because of the rain the windows in the truck were fogged up and that he could only see the driver's side mirror and that he lined up on the wrong vehicle when he started to back up. Claimant collided the Carrier's truck into another vehicle in the parking lot. Claimant drove the truck some 300 feet away from the crash site nearer to his personal vehicle, parked the truck, got into his personal vehicle and left the property. Claimant estimated that the collision took place between 2:30 PM and 2:45PM.

Claimant, the record reveals, called the Track Supervisor at 3:00 PM and told him about the collision. The Track Supervisor testified that he went to the Redgate parking lot, surveyed the damages to the vehicles, called the Claimant back and instructed him to return to the property to make a written statement and to submit to a drug test. The track supervisor recounted on the record that Claimant told him that that was absurd and that he, the Claimant would call the Assistant Division Engineer himself.

Claimant did call the Assistant Division Engineer, the record shows, and he was taken out of service. After an investigation on the property, Claimant was found guilty of Improper Performance of Duty for failing to confirm that the way was clear before backing up and Conduct Unbecoming an Employee for failing to properly report the accident.

Claimant admitted his guilt in regard to the collision at the investigation on the property and admitted that in hindsight he realized that he shouldn't have left the property afterward. Hence, the charges brought against Claimant were proven with substantial evidence.

Moreover, in light of the Claimant's service record including motor vehicle accidents in 2009, 2011 and most recently being dismissed in 2017 on nearly identical charges as found here, the Board is not convinced that dismissal was excessive in this matter. We can find no basis upon which to disturb the discipline assessed on the property.

AWARD:

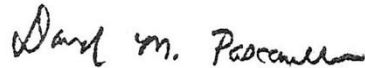
The Claim is denied.



Richard K. Hanft, Chairman



S. M. Goodspeed, Carrier Member



D. M. Pascarella, Labor Member

Dated at Chicago, Illinois, August 26, 2019