

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1048

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 239
)	
and)	
)	Award No. 239
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 [forty-three (43) day actual suspension] of Mr. T. Hileman, issued by letter dated May 30, 2018, in connection with his alleged improper performance of duty in that while assigned to the R1 Rail Gang, he was observed using a cellular phone while standing in the gauge of the track behind the glue machine near Mile Post N278.8 on the Pocahontas Division at approximately 4:10 P.M. on Monday, April 16, 2018 was harsh and excessive (Carrier’s File MW-BLUE-18-41-SG-192 NWR).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Hileman shall be restored for all lost time and made whole.”

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 in this matter entered the Carrier's service on January 5, 2004. On April 16, 2018, Claimant was assigned as a Laborer on the R-1 Gang on the Pocahontas Division. Claimant was observed by his supervisor looking at his cell phone at approximately 4:10 PM after the Claimant had finished working for the day behind the glue machine while standing in the gauge of the track near Mile Post 278.8 near Elliston, VA. Claimant admitted on the record that he was standing in the gauge of the track checking to see whether his phone was turned off or on. His supervisor, the Charging Officer, observed him from six (6) to ten (10) feet away, but walked away. Between twenty (20) and sixty (60) minutes later, Claimant's supervisor returned and took Claimant out of service.

This Claimant is a fourteen (14) year employee with no previous discipline. He admitted to the Rule violation. Hence, the charge against him was proven with substantial evidence.

The Board, however, must also look at the discipline assessed and consider whether the disciplinary penalty was commensurate with the rule violation proven. Here, a Forty-three (43) day actual suspension was clearly excessive given the circumstances involved in this incident.

For that reason, the Board determines to sustain the claim only with regard to the disciplinary penalty assessed and orders the discipline to be reduced to a three (3) day suspension.

AWARD:

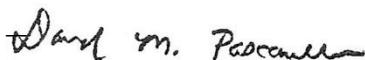
Claim sustained in accordance with the findings.



Richard K. Hanft, Chairman



S. M. Goodspeed, Carrier Member



D. M. Pascarella, Labor Member

Dated at Chicago, Illinois, August 26, 2019