

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1048

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 241
)	
and)	
)	Award No. 241
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
NORFOLK & SOUTHERN 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 [five (5) day actual suspension and a fifteen (15) day deferred suspension with a probationary period of six (6) months] of Mr. E. Eaton, issued by letter dated October 12, 2017, in connection with his alleged conduct unbecoming an employee and improper performance of duty in that while assigned as a laborer at the Roadway Material Yard in Roanoke, Virginia, he was observed improperly popping the clutch while operating the RMY77 Tug Machine and distracting fellow employees by unnecessarily honking the horn on the tug machine and subsequently made false statements to Supervisor Wolfe regarding the incident, at approximately 11:45 A.M. on September 7, 2017 was the result of an investigation that was not held in a fair or impartial manner and which did not prove that Mr. Eaton was at any time guilty of any of the alleged charges (Carrier’s File MW-BLUE-17-102-SG-703 NWR).

2. As a consequence of the violation referred to in Part 1 above, Claimant E. Eaton shall be compensated for the five (5) days/forty (40) hours at his respective rate of pay for the actual suspension assessed by the Carrier and shall also have all charges and time assessed or deferred, including the probationary period of six (6) months, 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 in this matter was, on September 7, 2017, employed as a Roadway Material Yard Laborer with more than six (6) years' service. On that date his job responsibilities included driving a tow motor pulling two (2) material carts to various locations within the Material Yard to deliver parts to co-workers.

As Claimant completed delivering the parts, he began driving the tow motor with two trailers in tow to its storage area.

As Claimant was traversing to the tow motor's parking area, the Manager of the Material Yard happened to be walking out of the East Railway Material Yard #10 storage building. The Manager testified at the investigation on the property that he observed Claimant unnecessarily honking the tow motor's horn to distract other employees, pausing the machine, popping the clutch and causing the machine's front wheels to leave the ground and then aggressively shifting the machine's gears in full throttle. The Material Yard Manager went to talk to the Claimant relative to what he testified he had just witnessed and further testified that both parties to the conversation became "firm". The Material Yard Foreman further took umbrage with the fact that Claimant denied showing off by repeatedly blowing the tow motor's horn, hot rodding the machine by "pulling a wheelie" and aggressively shifting gears.

The problem for the Carrier in this matter is that the Material Yard Manager's accusations were uncorroborated by any witnesses while Claimant called two eye-witness who testified that they did not observe Claimant operating the tow motor recklessly or aggressively and that it was standard practice in the material yard to repeatedly sound a moving machine's horn in order to warn other employees of the machine's movements. One of those witnesses was following Claimant fifty (50) feet behind the tow motor in order to give him a ride back to the work area and had an unobstructed view of what took place.

Hence, the Carrier has failed to meet its burden of proof that Claimant improperly performed his duty as assigned.

Claimant was further found responsible for Conduct Unbecoming an Employee for Claimant's negative answers and/or refusing to respond to the situation when the eyewitnesses testified that Claimant was not doing what the Manager accused him of. No rule that has been brought to the Board's attention requires an employee to agree with a Supervisor when he is being falsely accused, that is what Investigations are for.

Inasmuch as the Carrier failed to meet its burden of proof, the Claim is sustained.

AWARD:

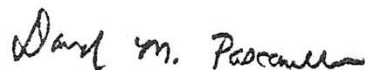
Claim sustained in accordance with the findings.



Richard K. Hanft, Chairman



S. M. Goodspeed, Carrier Member



D. M. Pascarella, Labor Member

Dated at Chicago, Illinois, August 26, 2019