

**NATIONAL MEDIATION BOARD**

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
DIVISION - IBT RAIL CONFERENCE	)	Case No. 201
and	)	
	)	Award No. 201
NORFOLK SOUTHERN RAILWAY COMPANY	)	
	)	

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Richard K. Hanft, Chairman & Neutral Member  
T. W. Kreke, Employee Member  
D. L. Kerby, Carrier Member

Hearing Date: February 25, 2010

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

1. The dismissal of Claimant Kevin Miller for the alleged violation of improper performance of duty as a machine operator concerning Anchor Spreader AS-88146 operated by you colliding with AS-07023 operated by Employee S. Wadley at Mile Post 387.9 in Belmont, North Carolina on April 23, 2009 was harsh and excessive and in violation of the Agreement (Carrier's File MW-ATLA-09-12-SG-207).
2. As a consequence of the unjust dismissal(s) described in Part 1 above, Mr. Miller shall be made whole and restored to the service of the Carrier, with pay for all lost time, seniority and vacation unimpaired."

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.

AWARD:

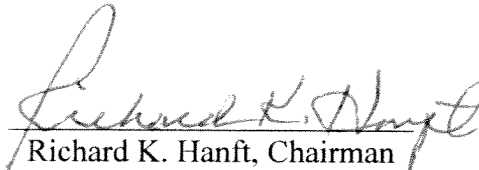
After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:


At approximately 8:20 A. M. on April 23, 2009 Claimant was tramming an Anchor

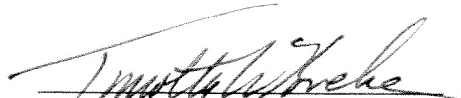
Spreader from its overnight tie up to a pocket track for eventual transition to the work area on the Main Line. As the machine directly in front of Claimant's came to a stop, its operator testified at the investigation on the property, that he flashed the lights on that machine to signal to Claimant that he had come to a stop. At that moment, Claimant testified, he was momentarily distracted while crossing a bridge some 500 feet behind the stopped machine ahead of him and that when he looked ahead and saw the stopped machine he fully engaged the brakes on his machine several times, but nevertheless was unable to stop and collided at a speed of between 2 and 10 miles per hour with the machine ahead, pushing it into the cart being pulled by the Magnet Machine ahead of it. There is no dispute that the collision occurred. The impact of the collision caused minimal damage to both machines and the cart attached to a magnet machine.

Claimant forthrightly admitted during the investigation on the property that a momentary lapse of concentration caused him to be in violation of Operating Rule 814(a) that requires on-track equipment to be prepared to stop within half the range of vision. Hence, given Claimant's admission of responsibility, we must conclude that the Carrier proved the charges against Claimant by substantial evidence. However, under the peculiar circumstances of the case before us, we find the penalty of dismissal to be excessive. Claimant shall be reinstated to service but without compensation for time out of service and he shall forfeit his machine operator seniority.

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

  
Richard K. Hanft, Chairman

  
D. L. Kerby  
Carrier Member 4/27/10

  
T. W. Kreke  
Employee Member

April 27, 2010

Dated at Chicago, Illinois, March 29, 2010