

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 206

Parties to Dispute:

BROTHERHOOD OF MAINTENCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim: "Claim of the System Committee of the Brotherhood that

1. The discipline (90 days actual suspension) imposed upon Mr. C. McDowell in connection with charges of improper performance of duties as a B & B flagging foreman, in connection with allegations that Claimant failed to remain present throughout the day at the work locations of one of the contractors for whom he was flagging or to remain readily available for contact by radio, as required by Safety and General Conduct Rules GR-3 and GR-6, the latest incident being August 26, 2008, was arbitrary, capricious, unjust and in violation of the Agreement (Carrier's File MW-GNVL 08-32-BB-570)
2. As a consequence of the unjust suspension described in Part I above, Mr. McDowell shall be compensated for all earnings opportunities and other benefits deprived him, including investigation attendance and that his record be cleared of the charges and results therefrom."

Upon the whole record and all the evidence, after hearing, the Board finds 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 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:

The Claimant was performing the duties of Roadway Worker in Charge, while assigned as a B&B Flagging Foreman when the events leading to his suspension took place. A Roadway Worker in Charge is the person entrusted to regularly monitor pile driving such that immediate action can be taken if there is any safety threat to train traffic. The particular project to which the Claimant was assigned was a North Carolina

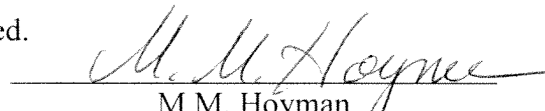
Department of Transportation (NCDOT) project involving the construction of a highway bridge over the railway. The railroad was charging the state for the expertise of a Roadway Worker in Charge, specifically the Claimant, to make sure no pilings impeded the track. The Carrier has a general conduct rule (GR-6) that employees must not absent themselves from duties without the proper permission from an authority. The Carrier maintains that to be absent from the work site in the case of a Roadway Worker in Charge means the person is not dutifully performing the job duties.

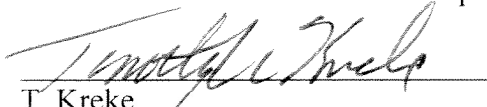
On August 23 the NCDOT complained to Claimant's supervisor that the Claimant was nowhere to be found. The preponderance of evidence supports the finding that the Claimant on the day of August 26, was not at the first site, the second site, or the motel when supervisor Collins and one other employee, Mr. Browne went to check on him. The other workers on site also attested to the fact that the Claimant had not been seen and the Claimant did not answer three attempts at radio calls. When Claimant did finally answer a subsequent call, he responded to his supervisor's question of: "Where are you?" by stating he was at the first work site. However, when he gave his supervisors directions they discovered him at a park, and not at work. His explanation for this was bad weather. He also claimed he had gone out to the store to buy chicken for dinner and other personal reasons.


The Claimant's supervisor ordered him to leave service, pending an investigation, due to having been away from his work assignment. In a letter dated September 3, the Claimant was told to appear at a formal investigation on September 18. The hearing officer made a finding that claimant was guilty and awarded a ninety-day suspension.

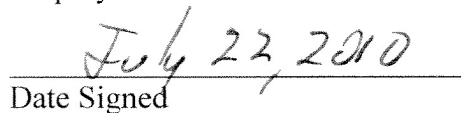
The Organization raised both some procedural concerns and substantive concerns. Chief among the substantive concerns were: that the Claimant had not been trained to this job, that it was impossible to be two places at once, and that the charge was vague. However, the Carrier met its burden of proof and the Board finds there is not enough evidence to support the Organization's objections. Given the circumstances and facts of the case, the discipline is warranted.

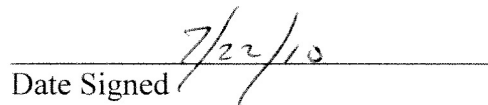
The claim is denied.


M.M. Hoyman
Chairperson and Neutral Member


T. Kreke
Employee Member


D.L. Kerby
Carrier Member


Date Signed


Date Signed