

**NATIONAL MEDIATION BOARD**  
**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

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|---|---|---------------|
| BROTHERHOOD OF MAINTENANCE OF WAY       | ) |               |
| EMPLOYES DIVISION – IBT RAIL CONFERENCE | ) | Case No. 249  |
|   | ) |               |
| and                                     | ) |               |
|   | ) | Award No. 249 |
| NORFOLK SOUTHERN RAILWAY COMPANY        | ) |               |
| (Former Southern Railway Company)       | ) |               |

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Richard K. Hanft, Chairman & Neutral Member  
D. M. Pascarella, Employee Member  
D. L. Kerby, Carrier Member  
Hearing Date: July 25, 2017

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

1. The Carrier's disciplines [fifteen (15) days actual suspension] of Messrs. N. Owens and J. Preslar, issued by letters dated December 3, 2014, were arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier's Files MW-GNVL-14-20-LM-709 and MW-GNVL-14-21-LM-710 SOU).
2. As a consequence of the violations referred to in Part 1 above, Claimants N. Owens and J. Preslar shall be made whole by exonerating them of all charges placed against them, paying them for all time lost, with seniority, qualifications, vacation and all other rights unimpaired."

**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.

**AWARD:**

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

It is undisputed that commercial power at the AT&O Junction was lost at 11:57 a.m.

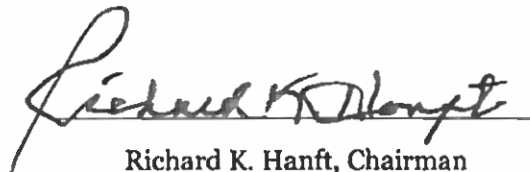
A supervisor for the C & S testified that he got to the AT&O Junction around 6:15 p. m. and found the triplex wire dangling and noted that the pole from which it was suspended appeared to have been hit and was leaned over. He testified that he noticed tire tracks and impact marks on the pole.

Coincidentally, Claimants in this matter got track time for that exact location at 11:50 a. m. on that day, seven minutes before the power went out due to the pole supporting the wire supplying power being impacted. Both Claimants deny any knowledge of the pole being struck by the welding truck at any time.

Both Claimants were assessed a 15-Day actual suspension for their alleged responsibility in connection with striking a utility pole while in a company vehicle and conduct unbecoming an employee in that they failed to report the incident to the proper authority and when questioned about the incident, provided false statements in regard to their knowledge and involvement in the impact to the pole.

While the circumstantial evidence points heavily toward the conclusion that the pole in question was impacted by the welding truck because the Claimants took track time just seven (7) minutes before the power went out, the evidence does not necessarily prove that the Claimants in this matter had knowledge that their welding truck struck that pole, if indeed it did. A large part of the disciplines here was based on conduct unbecoming an employee in that they failed to report the incident to the proper authority and they allegedly provided false statements regarding their involvement in a collision. Those allegations were not proven and cannot stand.

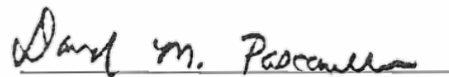
Considering the Claimants' disciplinary records, the Board finds that the fifteen-day (15) suspensions shall be reduced to a five (5) day suspension for Claimant Owens and a three (3) day suspension for Claimant Preslar.

  
Richard K. Hanft, Chairman



D. L. Kerby  
Carrier Member

Dated at Chicago, Illinois, September 5, 2017



D. M. Pascarella  
Employee Member