

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	Case No. 250
)	
and)	
)	Award No. 250
NORFOLK SOUTHERN RAILWAY COMPANY)	
(Former Southern Railway Company))	

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 discipline (dismissed from all services with Norfolk Southern Railway) of Mr. R. Weaver, issued by letter dated June 22, 2015, in connection with his alleged improper performance of duty, in that while operating a tamper near Mile Post RD75.1 at approximately 9: 10 A.M. on May 6, 2015, he allegedly failed to stop within half the range of vision and collided with a gauge spiker, was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier's File MW-PITT-15-78-SG-350 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Weaver shall be made whole for all financial losses as a result of the Carrier's action, as detailed in the initial claim."

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:

The Claimant in this matter entered service with the Carrier on January 12, 2005 and established seniority as a Machine Operator on December 3, 2006.

On May 6, 2015, Claimant was assigned to operate a Tamper on the R-3 Rail Gang. As the gang was making an 8 mile tram toward their designated work location, the two Gauge Spikers leading the convoy of on-track equipment directly in front of Claimant's Tamper stopped to load kegs of spikes onto the machines. The lead machine was loaded and pulled ahead as the second machine was being loaded. Claimant was approaching the second Gauge Spiker that was beginning to be loaded. Claimant related at the Investigation on the property that as he approached, at approximately three (3) miles per hour, the stopped Gauge Spiker that was being loaded, he glanced off to the side for 5 – 10 seconds and impacted the Gauge Spiker with the Tamper. The three co-workers loading the Gauge Spiker were struck by it upon impact, one being pinned beneath the Spiker.

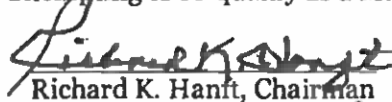
Claimant was held out of service and an Investigation into the matter was conducted on the property. Claimant was notified that he was dismissed for his responsibility in violating Rule 812 on June 22, 2015.

While the transcript of the testimony given at the investigation clearly shows Claimant's responsibility in this matter and three of Claimant's co-workers were struck by the Gauge Spiker when it was impacted by the Tamper, one being seriously injured, the Board looks at the record as a whole.

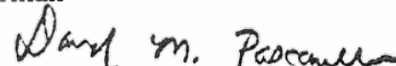
Claimant's momentary loss of focus cost his co-workers pain, injury and anxiety while also costing the Carrier in damages to the equipment. Trammimg the machine is a fundamental function of a Machine Operator's position and dismissal for failure to properly execute that fundamental task is neither arbitrary nor excessive.

As stated above, the Board reviews the record as a whole and in this matter the Claimant has an exemplary record mitigating against the decision made on the Property. Claimant has never before been in a collision on Carrier's equipment in the 7-½ years he has been a Machine Operator. Moreover, Claimant has a flawless disciplinary record over the 10-½ years he has been a Railroader.

Weighing Claimant's record against his momentary improper performance of duty, the Board has determined that Claimant shall be reinstated as a Trackman, forfeiting his seniority as a Machine Operator and without compensation for time out of service. Claimant is not prohibited from bidding on and attempting to re-qualify as a Machine Operator in the future.


Richard K. Hanft, Chairman


D. L. Kerby
Carrier Member


D. M. Pascarella
Employee Member

Dated at Chicago, Illinois, September 5, 2017