

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 251
)	
and)	
)	Award No. 251
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 service with Norfolk Southern Railway Company) of Mr. W. Smelcer, issued by letter dated December 4, 2014 in connection with his alleged improper performance, in that at approximately 8:43 A.M. on October 27, 2014 when he was issued joint occupancy for TA 5899 he incorrectly repeated to the supervisor that the TA was for Main Track 1 without catching the discrepancy and in connection with his alleged conduct unbecoming an employee, in that at approximately 9:27 A.M. that same day he placed a gang truck on the incorrect track but failed to report the mistake to proper authority and failed also to inform a member of his work group that the actual limits were for Main Track 2, resulting in a near miss with a train for two (2) members of the work group and extensive damage to a Carrier vehicle was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier's File MW-CN-14-20-LM-677 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant W. Smelcer shall be made whole by exonerating him of all charges placed against him, restoring him to service, paying him 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:

Claimant in this matter holds seniority to 2006 and on October 23, 2014 was working as a Foreman on Track Maintenance Gang TM-430. Claimant was the Roadway Worker in Charge ("RWIC") responsible for obtaining track authority for a work group consisting of himself and a co-worker in the Emory Gap Section Truck, Track Repairmen in an Electric Welding Truck and an adjacent Section Crew in their Gang Truck. All of the workers for which Claimant was responsible were occupying "High-Rail" vehicles riding on the track.

The work group was following a "Sperry Truck" operated by the Assistant Track Supervisor that detects internal rail defects. As the "Sperry Truck" found defects in the rail, the work group was to follow along and repair the defects found.

The plan was to have the Assistant Track Supervisor in the "Sperry Truck" communicate directly with the dispatcher controlling that section of track and obtain track authority for him and the "Sperry Truck". Claimant, as the RWIC for the work group, was to obtain permission from the Assistant Track Supervisor to jointly occupy the same track limits granted to the "Sperry Truck".

As planned, the Assistant Track Supervisor obtained track authority from the Dispatcher to occupy Main Track Two between EG Tower and Tunnel 26 from 8:43 a. m. until 10:15 a. m. The Assistant Track Supervisor correctly repeated the track limits back to the Dispatcher. Claimant heard the conversation between the Dispatcher and the Assistant Track Supervisor over the radio and wrote down the track limits in order to request joint occupancy for the track authority. The Claimant and the Assistant Track Supervisor had a radio conversation relative to Claimant's work groups sharing occupancy of the Assistant Track Supervisor's track authority and a recording of the conversation showed that Claimant incorrectly repeated that he and his forces were to occupy Track One rather than Track Two as was granted by the track authority. Neither the Claimant nor the Assistant Track Supervisor caught the error and the Claimant subsequently directed the crews under his protection to foul Main Track One.

Later that morning, Claimant contacted the Dispatcher to request additional track time. During their conversation, Claimant realized that he and his crew were

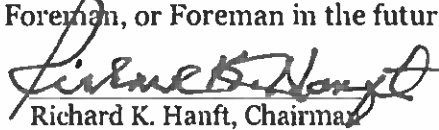
occupying the wrong track, but did not so advise the dispatcher or the Track Repairmen fouling Main Track One. Instead he proceeded to the Old Valley Road Crossing and set his truck off Main One and onto Main Track Two. He failed to inform his crew that they were fouling the wrong track. At 9:34 a. m. another Foreman contacted Claimant in order to join the work group and receive track protection. Claimant provided that Foreman proper limits on Main Track Two. Approximately one hour later, at 10:43 a. m. a Track Repairman in the Electric Welding Truck contacted Claimant to inform him that he was going to set the truck on Main One. Even though Claimant was aware that their protection was for Main Track Two, he confirmed that the Repairman could foul Main Track One.

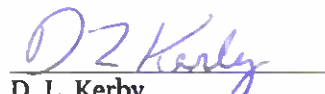
As the Track Repairmen proceeded down the unprotected track pursuant to Claimant's wrongfully-granted permission, they encountered a North-bound train coming at them on the track they were fouling at approximately 23 miles per hour. They threw the truck in reverse and tried to outrun it, unsuccessfully. The two Repairmen bailed out of the truck and it was struck by the oncoming train.

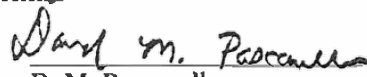
Accordingly, an Investigation was held and Claimant was found to be responsible for improper performance of duty and conduct unbecoming an employee. As a result, Claimant was dismissed from service. The Organization filed a Claim that was progressed in the usual manner including conferencing on the property without resolution. That Claim now comes before this Board for final review.

Claimant appeared before this Board and was appropriately remorseful. He tried to explain to the members that he became so overwhelmed by his mistake that he wasn't thinking clearly. He took full responsibility for his errors, but also pointed to the fact that management shared his responsibility for initially miscopying the proper track limits.

The Board was convinced that, looking at Claimant's eight (8) years of prior blemish-free service, his career can be salvageable. Hence, it is ordered that Claimant is to be returned to service as a Trackman without compensation for time out of service, and with forfeiture of seniority as a Machine Operator, Assistant Foreman and Foreman. Claimant is not prohibited from bidding on and attempting to re-qualify as a Machine Operator, Assistant Foreman, or Foreman in the future.


Richard K. Hanft, Chairman


D. L. Kerby
Carrier Member


D. M. Pascarella
Employee Member

Dated at Chicago, Illinois, September 5, 2017