

**NATIONAL MEDIATION BOARD**  
**SPECIAL BOARD OF ADJUSTMENT 1049**

Brotherhood of Maintenance of Way Employees	)	
Division – IBT Rail Conference	)	
	)	Case No. 252
And	)	
	)	Award No. 252
Norfolk Southern Railway Company	)	
(Former Southern Railway Company)	)	
	)	

Richard K. Hanft, Chairman and Neutral Member  
D. M. Pascarella, Employee Member  
D. L. Kerby, Carrier Member

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline [approximately fifty (50) day actual suspension] of Mr. R. Dalton, issue by letter dated June 3, 2015, in connection with his alleged failure to follow instructions, in that at approximately 7:20 A. M. on Wednesday, April 15, 2015 he was instructed by his supervisor and his foreman to operate the Glue Machine and refused to do so was in violation of the System Discipline Agreement (Carrier’s File MW-ATLA-15-18-SG-287 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Dalton shall have his suspension set aside with all notations thereof removed from all Carrier records and he shall also be restored all financial and benefit losses, such as vacation and health insurance benefits (including coverage under the railroad industry national plan) occasioned as a result of the violation, including: (1) straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of suspension from service (this amount is not reduced by earnings from alternate employment obtained by Claimant while wrongfully suspended); (2) any general lump-sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service; (3) overtime pay for lost overtime opportunities based on overtime for any position Claimant could have held during the time Claimant was suspended from service or on overtime paid to any junior employee for work Claimant could have bid on and performed had Claimant not been suspended from service; and (4) health, dental and vision care

insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly suspended.”

FINDINGS:

Special Board of Adjustment 1049, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other cases.

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

The record reflects that Claimant was removed from service on April 15, 2015 and advised to attend a formal investigation on April 30, 2015. That Investigation was postponed and eventually held on May 15, 2015. The Claimant was charged with: "Failure to follow instructions in that on April 15, 2015 at approximately 7:20 AM, you were instructed by your supervisor and your foreman to operate the glue machine and you refused to do so.

Claimant, the record shows, was working as a Track Laborer on Gang R-2 on April 15, 2015. After the morning safety meeting and stretching exercises, the gang turned out and began fueling the equipment to pull it out of the hole. Claimant testified that he and other trackmen were assisting with the fueling.

One of the Machine Operators working with Claimant fueling the equipment related that other employees were teasing Claimant that he should be preparing the glue machine rather than fueling the equipment, as he was going to be working with it later. The machine operator who usually operates the glue machine was temporarily working in another capacity to cover for an employee who was off. That same co-worker testified at the investigation that Claimant stated that he was not going to work with the glue machine for only two days because it would ruin his clothes and he didn't think that he would get machine operator's pay for doing it. That employee also related that Claimant told him that he was going to use safety as an excuse to get out of working with the machine.

Claimant's foreman testified that he saw Claimant and told him that they needed him to get with another employee, a machine operator, on the glue machine. He related that Claimant stated that he wasn't going to run it because he didn't feel safe.

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The foreman recalled that he told Claimant a second time to go to the glue machine and again Claimant stated that he wasn't going to run it because he didn't feel safe and added that he was tired of getting screwed out of his pay.

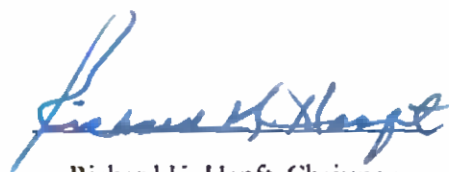
The foreman, the record shows, went to the Rail Supervisor and reported Claimant's reluctance to work with the glue machine. The Rail Supervisor testified that he went to the Claimant and asked him why he did not want to work with the glue machine and he replied that he didn't feel safe to run it and that he might not know what valve to turn. The Rail Supervisor recalled that he explained that Claimant's only function would be to pull the trigger on the wand to release the glue and that Claimant then asked if he was going to get paid to run the machine. The Rail Supervisor testified that he then left the Claimant and called the General Division Engineer and reported what had just transpired and that the General Division Engineer called him back shortly after and instructed the Rail Supervisor to take Claimant out of service.


The Organization argues that Claimant's declination to work with the glue machine was based on his legitimate and earnest safety concerns which immunized him from being guilty of failing to follow instructions. We find the Claimant's safety concerns to be disingenuous. Rather it appears, as supported by the testimony of a co-worker, Claimant's foreman and the Rail Supervisor, that Claimant was more concerned with extorting the Carrier for machine operator's pay than any legitimate safety concern.


Accordingly, we conclude that the Carrier proved the violation Claimant was charged with by substantial evidence. Based on the record before us, we cannot say that a fifty (50) day suspension was arbitrary, capricious, unjust or unsupported by the record evidence. Hence, we can find no basis to sustain the claim.

Award:

The Claim is denied.

  
Richard K. Hanft, Chairman

  
D. M. Pascarella, Employee Member

  
D. J. Kerby, Carrier Member

Dated at Chicago, Illinois, January 18, 2018