

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT 1049

Brotherhood of Maintenance of Way Employees)	
Division – IBT Rail Conference)	
)	Case No. 254
And)	
)	Award No. 254
Norfolk Southern Railway Company)	
(Former Southern Railway Company))	
<hr/>		

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 [thirty (30) day actual suspension] of Mr. J. Sudsberry, issued by letter dated December 30, 2015 in connection with his alleged failure to properly perform his duties as a foreman while working on the Coosa River Bridge at Mile Post 108.0N, on November 16, 2015, in that he failed to ensure that Bridge and Building (B & B) Helper T. Duncan utilized fall protection when he exited the cab of hi-rail Vehicle No. 210660 and used a ladder to climb down from the track onto the pier to retrieve his wallet was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive and without cause (Carrier’s file MW-BHAM-15-37-BB-944 SCU).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Sudsberry shall have his suspension set aside with all notations thereof removed from the Carrier’s records and 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:

Claimant was summoned to an Investigation held on December 14, 2015 to determine his responsibility, if any, in connection with his failure to properly perform his duties as a foreman while working on the Coosa River Bridge at MP 108.0N on November 16, 2015 in that the Carrier alleges that Claimant failed to ensure that B&B Helper T. Duncan utilized fall protection when exiting the cab of the hi-rail vehicle and used a ladder to climb down from the track onto a bridge pier to retrieve his wallet.

The Carrier argued in its submission to the Board that the record evidence shows that Claimant failed to properly perform his duties as a foreman when he failed to ensure that Helper Duncan utilized fall protection when exiting the cab of the truck and failed to conduct a job briefing with Helper Duncan before he exited the truck to perform new work tasks required as a result of the change in the work to move the hi-rail truck to the clear for a train to pass.

The Organization strongly asserts that the record evidence fails to show that the Claimant had actual or imputable knowledge that B&B Helper Duncan was engaged in a task that required him to use fall protection and thus, Claimant cannot validly be held accountable for his charge’s failure to use fall protection. The Helper never told Claimant that he was going to climb down onto the pier; Claimant was under the impression that the Helper was only exiting the truck cab to put away tools and equipment. Moreover, at the time that the Helper was exiting the truck cab, Claimant was fully engaged on the radio ensuring track protection.

Claimant, the Organization contends, did not see the Helper after he exited the truck under the auspices of just going to clear up their equipment.

Claimant in this matter was, at the time of the incident, a nine-year employee with no disciplinary record. While it is clear from the record that Claimant was pre-occupied on the radio taking care of other duties he is responsible for, as a foreman there was without doubt, a lapse. Claimant was nevertheless in charge of and responsible for every member of the work group. We cannot say that the decision of the hearing officer that Claimant had fault was wrong. Claimant, in fact, testified that fall protection was a requirement and one of the members of his crew that he was responsible for ignored the requirement. Claimant had the responsibility to make certain that all members of his work group followed applicable Norfolk Southern Rules. The Board can find no reason to disturb the discipline assessed on the property.

Award

The Claim is denied.


Richard K. Hanft, Chairman



D. M. Pascarella, Employee Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, January 22, 2018