

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

Brotherhood of Maintenance of Way Employees	)	
Division – IBT Rail Conference	)	
	)	Case No. 255
And	)	
	)	Award No. 255
Norfolk Southern Railway Company	)	
(Former Southern Railway Company)	)	
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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 (dismissal) of Mr. K. Carlton, issued by letter dated March 20, 2015, in connection with his alleged improper performance of duty and failure to work safely in that while operating Company Section Truck No. 209605 at approximately 8:00 A.M. on February 12, 2015, on the right of way of the South End of the Forrestville Yard in Rome, Georgia, he attempted to perform a 3-point turn and failed to stop the vehicle after losing sight of his ground man, creating a dangerous work situation and, also, upon re-establishing line of sight with his ground man, he failed to follow the stop signals provided and impacted a private vehicle, resulting in damage to the private vehicle, was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive and without cause (Carrier’s File MW-ATLA-15-06-BB-139 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant K. Carlton 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:**

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 on March 4, 2015 to determine his responsibility, if any, concerning:

1. Improper performance of duty and failure to work safely in that while operating Company Section Truck No. 209605 at approximately 8:00 A.M. on February 12, 2015, on the right of way of the South End of the Forrestville Yard in Rome, Georgia, you attempted to perform a 3-point turn and failed to stop the vehicle after losing sight of your ground man, creating a dangerous work situation; and,
2. Improper performance of duty in that while operating Company Section Truck No. 209605 at approximately 8:00 A.M. on February 12, 2015, on the right of way of the South End of the Forrestville Yard in Rome, Georgia upon re-establishing line of sight with your ground man, you failed to follow the stop signals he provided and impacted a private vehicle. This resulted in damage to the private vehicle.

There is no doubt that Claimant failed to stop the Section Truck as soon as he lost sight of his ground man, he admitted as much at the investigation. Claimant's testimony relative to the second charge however, is nowhere near an admission. Claimant stated that he applied the brakes as soon as he re-established sight of his foreman waving wildly and jumping up and down. Nevertheless, Claimant was unable to stop soon enough to avoid collision with a private vehicle. Had he stopped as soon as he lost eye contact with the ground man the collision would have been avoided.

Aggravating Claimant's undeniable rule violation is the fact that Claimant had only four (4) months earlier been re-instated after a dismissal for another serious lapse of situational awareness that exposed his co-workers to serious danger.

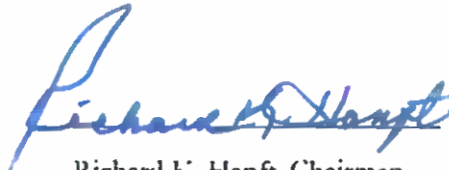
Claimant admitting to not stopping the truck when he lost sight of the ground man and further admitted it was his responsibility to do so. Given Claimant's admission of responsibility, we must conclude that the Carrier proved the charges against Claimant by substantial evidence.

However, under the particular circumstances of the case before us, we find the penalty of dismissal to be excessive. While it is true that Claimant has been involved in two very serious situations over the past year that puts him in a bad light, the Board considers his service from 2006 through 2014 where he earned seniority as Foreman, Assistant Foreman and a Flagging Foreman

and is persuaded that this employee is salvageable. For that reason, the Board determines that Claimant shall be reinstated to service, but without compensation for time out of service and he shall forfeit his seniority as Foreman, Assistant Foreman and Flagging Foreman.

Award:

Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty (30) days following the date two (2) members of this Board affix their signatures thereto.



Richard K. Hanft, Chairman



D. M. Pascarella, Employee Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, January 24, 2018