

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT 1049

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| Brotherhood of Maintenance of Way Employees |) | |
| Division – BMT Rail Conference |) | |
| |) | Case No. 256 |
| And |) | |
| |) | Award No. 256 |
| 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 (dismissal) of Mr. D. Bentley, issued by letter dated December 1, 2015, in connection with his alleged failure to protect his assignment in that he was absent without permission on October 19, 2015 and also failed to follow instructions in failing to provide at least one (1) hour advance notice to supervision that he would be unable to report to work that same day, despite having previously been counseled and instructed to do so, was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive and without cause (Carrier’s File MW-CN-15-46-JM-864 SQU).
2. As a consequence of the violation referred to in Part 1 above, Claimant D. Bentley shall have his dismissal set aside with all notations thereof removed from all Carrier records and he shall be reinstated and restored all seniority rights and all entitlements to and credit for all financial and all benefit losses, such as vacation and health insurance benefits 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 the removal from service (this amount is not reduced by earnings from alternate employment obtained by Claimant while wrongfully removed from service); (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 removed from service, or on overtime paid to

any junior employee for work Claimant could have bid on and performed had Claimant not been removed 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 removed from service.”

FINDINGS:

Special Board of Adjustment 1048, 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 in this matter was a machine operator on GG-601 working near Big Stone Gap, Virginia. At the time of the alleged rule violation, Claimant had 11 years' service with the Carrier. By letter dated October 20, 2015 Claimant was instructed to appear at an Investigation “to determine your responsibility, if any, in connection with the following: 1.) failure to protect your assignment in that you were absent without permission on October 19, 2015; and 2.) failure to follow instructions in that you failed to provide at least one (1) hour advance notice to supervision that you would be unable to report to work on October 19, 2015 despite having previously been counseled and instructed to do so.”

That Investigation was conducted on November 17, 2015. Claimant did not attend the Investigation but his Union Representative did. Upon review of the record evidence, the Hearing Officer found Claimant guilty of the charges and informed Claimant by letter dated December 1, 2015 that he was dismissed from service.

The Organization, in its Claim submission to the Board argues that because Claimant's cell phone was not working properly, and thus, could not sound an alarm to wake him; and, that he never received a wake-up call from the motel as he had purportedly requested, that the technological failures and failures on the part of others upon whom Claimant justifiably relied should remove Claimant from responsibility for this failure to timely report.

While an employee's past service record has no bearing on the determination of innocence or guilt with regard to the pending charge, it does have influence on the propriety of the discipline assessed. The Board notes that with regard to this Claimant, he

has been counseled five (5) other times and disciplined three (3) other times for failure to protect his assignment. Moreover, over the ten (10) months just prior to this infraction, Claimant had been reinstated from dismissal only to serve two (2) more separate suspensions for failure to protect his assignment.

There is no doubt, based on the record before us that Carrier established by substantial evidence that Claimant, on October 19, 2015 failed to protect his assignment and was absent without permission. Moreover, Claimant did not follow the instructions he was issued at his previous counseling to provide advance notice to supervision if unable to report for work.

Further, the Claimant's service record affords no reason to mitigate the discipline imposed. We can find no basis to overturn the decision reached 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 26, 2018