

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

Brotherhood of Maintenance of Way Employees	)	
Division – IBT Rail Conference	)	
	)	Case No. 258
And	)	
	)	Award No. 258
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. P. Skakum, issued by letter dated October 29, 2015, in connection with his alleged conduct unbecoming an employee in that: on September 2, 2015, he wielded a switchblade knife and stated he would cut employee B. A. Mann; on September 3, 2015, he made offensive and inappropriate remarks and hand gestures to employee C. J. Bales, while discussing cows on the tracks; during the morning safety meeting on September 2, 2015, he alluded that two (2) employees should compare the size of their male anatomy in order to settle a dispute; during the first week of September, 2015, while working with employee C. J. Bales, he repeatedly used offensive language and repeatedly stated that he would refrain from speaking about women in a sexual manner; on September 2, 2015, he made disparaging remarks about the attire that employee C. J. Bales was wearing; as well as, Claimant’s alleged improper performance of duty in that on September 2, 2015, while operating a hi-rail vehicle with employee D. W. Hinegardner, III, he was traveling at an excessive speed and skidded into a public crossing at Mile Post H-185.6, narrowly avoiding a collision with a public motorist; on September 2, 2015, while operating a hi-rail vehicle with employee D. W. Hinegardner, III, he collided with a downed tree at Mile Post H-183.5; while conducting track inspections with employee B. A. Mann on June 5, 12 and 26, 2015, he failed to stop the hi-rail short of crossings and also performed switch inspections while traveling at thirty (30) miles per hour (mph) and while supervising a gang installing a frog at CP Waynetex on August 5, 2015, he directed the gang to stop their work without having installed screws and move ties was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh and excessive (Carrier’s File MW-ROAN-15-44-JM-791 SOU).

2. As a consequence of the violation referred to in Part I above, Claimant P. Skakum shall have his dismissal set aside with all notations thereof removed from all Carrier records and he shall also be reinstated and restored all seniority rights and all entitlements to and credit for all financial and 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 removal from service (this amount is not to be 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 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 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:

A charge of conduct unbecoming an employee can be, and here was, rooted in a violation of General Conduct Rule 900 that provides:

"Employees are to conduct themselves in a professional manner and not engage in behavior or display material that would be considered offensive or inappropriate by coworkers, customers or the public. Offensive or inappropriate behavior includes making disparaging remarks, telling jokes or using slurs concerning race, religion, color, national origin, gender, age, veteran status, sexual orientation, disability or any other legally protected status. Offensive or inappropriate material includes that which is sexually explicit or insulting because of race, religion, color, national origin, gender, age, veteran status, sexual orientation, disability or any other legally protected status."

Here, the record shows, there was ample evidence introduced during the investigation to support the hearing officer's finding on the property of conduct unbecoming an employee.

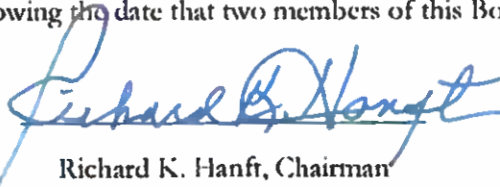
Moreover, the record reflects that Claimant failed to perform his duties safely, diligently and properly on multiple occasions; inspecting switches at thirty(30) miles per hour, operating the hi-rail vehicle at reckless speeds and failing to properly install a "frog" where only eight (8) of twenty (20) ties supported it are merely examples. Again, the hearing officer's findings on the property were neither unreasonable, arbitrary, capricious nor an abuse of discretion. There was substantial evidence in the record to support the same.

The Board, however, notes the Claimant's brief but notable tenure with the Company. Claimant only hired on in March, 2011 and in four (4) short years progressed through the ranks from Roadway Laborer to Assistant Track Supervisor. The Board is hopeful that this period of time out of service might serve as a wake-up call to an otherwise salvageable employee.

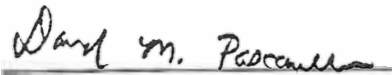
The Board directs the Carrier to reinstate Claimant to the position of entry-level Trackman without compensation for time out of service. All seniority dates established in any class above Trackman shall be forfeited.

AWARD

Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty days following the date that two 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 30, 2018