

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

Brotherhood of Maintenance of Way Employees	)	
Division – IBT Rail Conference	)	
	)	Case No. 260
And	)	
	)	Award No. 260
Norfolk Southern Railroad	)	
(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 [ninety (90) day actual suspension] of Mr. T. Blash, issued by letter dated June 3, 2014, in connection with his alleged conduct unbecoming an employee and marking off under false pretenses on April 14, 2014 when he made false statements to Carrier Supervision regarding his inability to protect his assignment on April 15, 2014 was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh, or excessive (System File Blash-T-04-14/ MW-ATLA-14-16-LM-213 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant T. Blash 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 in this matter, the record reveals, on April 14, 2014 asked to be excused from work on the following day, April 15, 2014. As of April 14, 2014, Claimant had exhausted all accrued vacation for the year and just wanted to be off work without compensation. He initially requested the time off from his immediate supervisor who denied the request due to operational requirements.

Claimant then called the Assistant Division Engineer ("ADE") and asked him to override his immediate supervisor's decision. The ADE declined to do so and instructed Claimant to report for duty on April 15, 2014.

Claimant did not report for duty on April 15, 2014 and as a result was charged with failure to protect his assignment. When Claimant reported for duty on April 16, 2014, supervision inquired about his absence and Claimant asserted that he was absent on the preceding day due to having to attend a child support hearing. When questioned further, Claimant related that in addition to taking care of child support matters that he had to walk across the street to the courthouse to be a witness in a case involving his brother being charged with theft by taking. After searching public records on the internet, Claimant's supervisors discovered that Claimant was in fact himself charged with theft by taking and was at the Henry County Georgia Superior Courthouse to enter a not guilty plea on his own behalf. Additional charges were added for marking off under false pretenses.

After thorough review of the record of the proceedings on the property, the Board determines that the Carrier failed to prove by substantial evidence that Claimant marked off under false pretenses.

Just because Claimant was involved in another court proceeding on April 15, 2014, the Carrier failed to prove that the Claimant did not have a meeting concerning his child support obligations on that same day. And, while the Carrier maintains that Claimant never produced evidence that he was, indeed, attending to child support matters, Carrier has failed to prove that he wasn't. It is not for Claimant to prove his innocence, but rather for Carrier to prove his guilt.

With regard to Claimant's failure to protect his position, there is no doubt after review of the record that Claimant requested uncompensated time off that was denied. Claimant, the record shows, nevertheless failed to report for duty on April 15, 2014. That charge was proven by credible evidence and must stand.

Special Board of Adjustment No. 1049  
Award No. 260

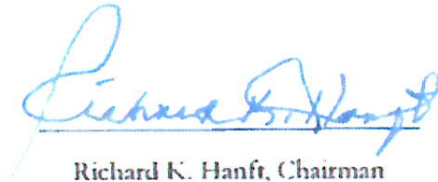
Since the charge of failure to protect his position was proven, but the charge of marking off under false pretenses was not, the Board is obliged to consider the penalty assessed.

Claimant, within the four (4) months prior to the charges here under consideration received a Letter of Counsel on December 13, 2013; a ten (10) day actual suspension for Absenteeism on December 20, 2013; a Thirty (30) day deferred suspension for Failure to Protect his Position on January 21, 2014; and, a thirty-five (35) day actual suspension for Failure to Protect his Position on February 18, 2014. Claimant's failure to meet his obligation to report for duty is problematic, to say the least.

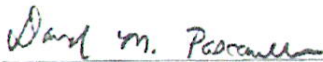
The Board determines that while the charge of failure to protect was proven by substantial evidence, but the charge of marking off under false pretenses was not, the penalty assessed was excessive. The discipline assessed shall, therefore, be reduced to a forty-five (45) day actual suspension.

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, February 4, 2018