

**NATIONAL MEDIATION BOARD**

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	)	
DIVISION – IBT RAIL CONFERENCE	)	
	)	Case No. 274
	)	
	)	Award No. 274
NORFOLK SOUTHERN RAILWAY COMPANY	)	
<u>(FORMER SOUTHERN RAILWAY COMPANY)</u>	)	

Richard K. Hanft, Chairman and Neutral Member  
D. M. Pascarella, Employee Member  
D. L. Kerby, Carrier Member

**STATEMENT OF THE CLAIM:** “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. R. Bryant, issued by letter dated September 12, 2015(sic) in connection with his alleged conduct unbecoming an employee, in that; (a) on July 21, 2016 supervision discovered that while he was assigned to assist Bridge and Building (B&B) Gang E-11R working near Lynchburg, Virginia, he failed to advise the foreman of his regular gang that he was absent from work on June 20, 2016 and on June 20, that he observed vacation days on July 11-14 and 21, 2016 resulting in him being paid for time in which he did not work as well as the improper payment of meals, travel time and mileage that he did not incur on June 20, 2016 and his payroll being entered as straight time rather than being properly charged for vacation time on July 11-14 and 21, 2016; and (b) on August 2, 2016, supervision discovered that on June 6-9, 13-16, 20-23, 27-30 and July 5-7, 2016 he allowed his foreman to enter travel time and mileage payments in his payroll for using his personal vehicle to drive from Company provided lodging to his worksite and he was compensated for those entries despite having been advised by Supervisor Williams that he was not entitled to those expenses when Company provided transportation was available, was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh and excessive (System File Bryant-RS-07-16-INV/ MW-GNVL-16-44-BB-740 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant R. Bryant shall have his dismissal set aside with all notations thereof removed from all Carrier records and he shall be reinstated to service with all seniority rights restored and entitlements to and credits for benefits, including vacation and health insurance benefits restored as well and he shall be made whole for all financial losses occasioned as a result of the violation, including: (a) straight time pay for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the Claimant at the time of removal from service (this amount is not reduced by earnings from alternative employment obtained by Claimant while wrongfully suspended); (b) any general lump sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service; (c) 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 and performed had Claimant not been removed from service; and (d) 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 No. 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 precedence 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 B & B Apprentice with seniority dating back ten (10) years at the time of the incident, to 2006. He had an unblemished disciplinary record. Claimant's regular assignment was to the E-22R Gang located in Greensboro, North Carolina. The Supervisor of that gang is Mr. Luther and the Foreman is Mr. Rich.

In early April, 2016, Claimant was “loaned” to another gang, the E-11R Gang, located in Lynchburg, Virginia. Claimant reported to Project Supervisor Robert Williams while working in Lynchburg. However, at that time, his payroll was still being handled through the Foreman of the E-22R gang in Greensboro, Mr. Rich.

Mr. Rich testified that after the first few weeks of trying to report hours worked accurately, it became too much and he instructed Claimant and one other employee loaned to the same gang to only tell him if there was a deviation from the standard forty (40) hour work week. Employees also receive daily meal allowances, travel allowance to and from their homes to the job location at the start and end of their weekly tour and mileage and travel time to and from the hotel they stay in during the work-week to the office.

There is no dispute that Claimant asked Project Supervisor Williams for a vacation day on June 20, 2016 that was approved. Claimant testified that he texted

Foreman Rich that he was taking a vacation day on the 20<sup>th</sup> on the evening of June 19, 2016. Foreman Rich does not recall receiving the text. The Claimant was unable to reproduce the text message. As a result, Claimant was paid ten hours straight time and mileage, travel time and meals as if he were at work when he was not. Claimant testified that he did not notice a difference in pay for that pay period, but further explained that his pay is direct deposited and he does not receive an itemized statement.

A similar situation occurred in mid-July. Claimant pre-arranged with Project Supervisor Williams to take vacation days July 11<sup>th</sup> and 12<sup>th</sup> to go out of town. Upon returning home from the out-of-town excursion, he discovered problems with the well at his home and arranged with Project Supervisor to extend his vacation over the rest of the work-week, July 13<sup>th</sup> and 14<sup>th</sup>. That extension was also approved. Again Claimant testified that he texted Foreman Rich and advised him that he was off all week. Again Foreman Rich does not recall receiving the text and Claimant was unable to retrieve them from his phone. Again Claimant was reported on payroll as if he'd worked all week.

None of this raised any flags until July 21, 2016. Assistant Division Engineer Nichols was high-railing the territory attempting to clear slow orders for weekend traffic. The ADE was advised that the Project Supervisor was unable to release his work due to a man-power shortage, including Claimant who had taken another vacation day. After checking into the payroll records, ADE Nichols discovered that Claimant had been off on vacation June 20, July 11-14 and July 21. June 20 and the period July 11-14 had not been recorded as vacation time. While the period July 11-14 and July 21 were subsequently changed to reflect vacation taken, the payment at ten (10) hours straight time, mileage, travel time and meals for June 20 had already been made.

ADE Nichols' further review of Claimant's payroll records further indicated that Claimant was also claiming travel time and mileage for using his personal vehicle to drive to and from the hotel where he was quartered to the worksite rather than riding in the gang truck on June 6-9, 13-16, 20-23, 27-30 and July 5-7, 2016. Those payments amounted to \$370.69 that Carrier alleges Claimant was not entitled to.

Upon discovery of the above, Claimant was taken out of service and summoned to appear at an investigation held on August 31, 2016 to determine his responsibility, if any, concerning conduct unbecoming an employee for claiming travel time and mileage and for falsifying payroll for his failure to report that he was on vacation on June 20, 2016 and not working as scheduled.

Claimant was found to be responsible and was dismissed from service by letter dated September 12, 2016.

Claimant, no doubt, was grossly negligent in reporting his proper time to proper authority. He was directed to report any change that deviated from a normal forty (40) hour work week directly to Foreman Rich. Claimant testified that he texted Foreman Rich relative to his vacation time taken on June 20, 2016 on the evening of June 19, 2016 and the week of July 11-14 on the evening of July 12, 2016. He was unable to produce evidence to substantiate his testimony. Foreman Rich didn't recall receiving those texts.

But Claimant cannot bear full responsibility for the payroll records being less than accurate. The system the Carrier relied on where employees and not their supervisors are to call in or text any changes in their hours while working under a supervisor who isn't in that loop leaves a lot to be desired. This dispute really boils down to a case of poor communications. As the Board understands it, as a result of this dispute, that method of payroll reporting has been revised and improved to make everyone in that process more accountable. All employees, whether management or bargaining unit employees have an obligation to be honest, but accountability is also needed.

Regarding the charge of conduct unbecoming an employee, the Board finds that while Claimant could have arranged for his co-workers to swing by his hotel and pick him up and transport him to and from the worksite, nowhere in the record does it indicate that anyone with authority ever told Claimant that he should or must do that. By driving his own personal vehicle to and from the worksite from and to his hotel, he violated no Carrier rule. Hence, the finding that Claimant engaged in conduct unbecoming an employee cannot stand.

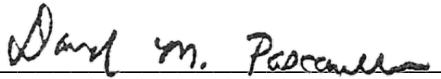
The Board finds that Claimant's false payroll submissions, or more accurately, lack thereof, were a result of gross negligence rather than intentional dishonesty. As explained above, the charge of conduct unbecoming an employee cannot stand. The Carrier is therefore directed to reinstate Claimant to service, without compensation for time out of service.

**AWARD:**

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



Richard K. Hanft, Chairman



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated In Chicago, Illinois, on November 21, 2018.