

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION – IBT RAIL CONFERENCE)	
)	Case No. 275
)	
)	Award No. 275
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. C. Hughes, issued by letter dated September 12, 2015 (sic), in connection with his alleged improper performance of duties as a foreman, in that on August 2, 2016 while he was providing track protection to a contractor that was performing rehabilitation work on Bridge Piers 1 and 2 near Mile Post VF 25.0 at Linden, North Carolina, he failed to ensure the track was safe for train traffic and did not recognize a low span at Piers 1 and 2 that resulted in the rail not being seated in the tie plates was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh, and excessive (System File Hughes- CG-08-16-INV/MW-GNVL-16-45-BB-763 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Hughes 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 assigned as a Flagging Foreman on a bridge near Linden, North Carolina for portions of the months of July and August, 2016. As a Flagging Foreman for the Carrier it was Claimant's responsibility to provide track protection for contractors rehabilitating Piers 1 & 2 of the bridge. This involved obtaining Track Warrants from the dispatcher that kept train traffic off the bridge while the contractors were working. It was further the Flagging Foreman's responsibility, when the contractors were done for the day, to check on the bridge and the tracks to make sure there were no defects, that the condition of the track met operating standards and to ensure that it was safe for train traffic before releasing his track time.

The contractors working on the bridge reported substantial completion of the work they were performing on July 21, 2016 and left the job. The contractor's Superintendent returned to the bridge on August 1, 2016 to begin de-mobilizing equipment but did not require track time that day. Claimant was assigned to meet with the contractor's Superintendent on Tuesday, August 2, 2016 and did so. The record reveals that Claimant met with the contractor in the morning, unlocked a gate for entry and obtained Track Time at 7:22 AM.

Claimant testified that almost immediately upon approaching the entry to the bridge he noticed that something wasn't right with the track, that it didn't look right. He further recalled that he went out onto the bridge and saw a gap there. Claimant alleged that he called his supervisor and told him that he needed to look at the track. Claimant testified that he did not tell his supervisor that the track was unsafe. The Claimant's supervisor told Claimant that he couldn't get there right away, but that he'd come by later. Claimant told the supervisor that the contractor had left the site and wouldn't be back until that evening and what did the supervisor want him to do? The supervisor,

not knowing that the track was unsafe, told Claimant to hang around a while and then go home. Claimant did just that. He hung around a while and then released the track for use at 12:52 PM. and left the Site.

The Board has reviewed the record developed on the property including the transcript of the investigation and all exhibits made a part of the record. Photographs of the defect found on the morning of August 2, 2016 were included. There was a gap between the rail and the tie plates of almost an inch. Testimony at the investigation indicated such a gap could cause the rail to bend, break or roll under when a train passed over it...on a bridge fifty (50) above a river.

Part of the charge investigated was for Claimant failing, on August 2, 2016, to recognize a low span at Piers 1 & 2 that resulted in the rail not being seated in the tie plates. That part of the charge was not proven. Claimant testified that he recognized a defect right away when he approached the entry to the bridge. The problem is, he did nothing about it and later released the defective track for train traffic. In so doing, he failed to properly perform his duties as a foreman. He failed to ensure that the track was safe for train traffic. There was substantial evidence to support the Hearing Officer's finding.

The Organization argues that dismissal in this matter is a harsh and excessive discipline when the last time that Claimant was disciplined for improper performance of duty as a flagging foreman the Board reduced a forty-five (45) day suspension to a thirty (30) day suspension for very similar behavior in a 2013 Award.

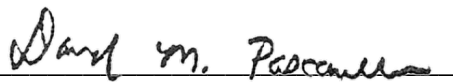
Apparently, a thirty (30) day suspension did not get Claimant's attention. While Claimant's past service record indicates the ability, if not the inclination, to be a productive employee, the Carrier cannot trust him to properly perform the duties of a foreman. Accordingly, Carrier is directed to reinstate Claimant to service without compensation for time out of service and without Foreman, Assistant Foreman or Flagging Foreman seniority.

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.