

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)

DIVISION – IBT RAIL CONFERENCE)

) Case No. 277

) Award No. 277

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 THE CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. C. Prosise, issued by letter dated January 6, 2017, in connection with his alleged failure to protect his assignment and failure to follow instructions, in that beginning on Monday, November 28, 2016, he failed to report to work despite having been previously counseled on April 19, 2016, May 12, 2016 and October 3, 2016 regarding his attendance, was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-FTW-16-215-SG-1062 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Prosise shall be reinstated to service with all seniority rights restored and entitlements to and credits for benefits restored including vacation and health insurance benefits, being made whole for all financial losses 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 the Claimant at the time of removal from service (this amount is not reduced by earnings from alternative employment obtained by Claimant while wrongfully removed); (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 with, finally, all notations of the dismissal removed from all Carrier records.”

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 entered the Carrier's service on June 14, 2004. At the time giving rise to this discipline Claimant was assigned and working as an Auto Machine Spike Operator on Tie and Surfacing Gang TS-2. On November 28, 2016 and for the rest of the following week, Claimant failed to protect his assignment by being absent without authorization and failed to follow instructions as he had previously been counseled on three (3) separate occasions in 2016 relative to protecting his assignment. Claimant at the investigation on the property admitted to the absences but offered no excuse or explanation other than experiencing personal problems. Claimant was found to be culpable on the property and by letter dated January 9, 2017 was dismissed from all service with the Carrier.

Claimant, the Board observes, had a flawless disciplinary record from June, 2004 when he entered service until April, 2016. His immediate supervisor for the most recent six (6) years of Claimant's career sang Claimant's praises at the investigation held on the property stating that Claimant was always a very safe and efficient employee who was very, very good at operating the equipment. Something, however, went off the rails in Claimant's personal life for a six-month period in 2016 leading to his dismissal.

The Board determines that given Claimant's prior service record that he is worthy of being afforded a second chance. Claimant is to be reinstated with seniority unimpaired but without compensation for time out of service. Hopefully, Claimant will

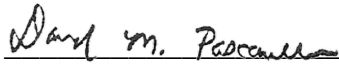
take this opportunity to get himself back together and move ahead with a successful career.

AWARD:

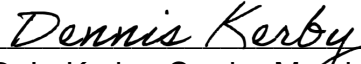
Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty (30) days following the date that two members of this Board affix their signatures hereto.



Richard K. Hanft, Chairman and Neutral Member



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.