

**NATIONAL MEDIATION BOARD**

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)

DIVISION – IBT RAIL CONFERENCE )

) Case No. 278

) Award No. 278

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

1. The Carrier’s discipline (dismissed from all services with Norfolk Southern Railway) of Mr. J. Johnson, issued by letter dated March 3, 2017, in connection with his alleged conduct unbecoming, in that on Monday, January 30, 2017, he used unprofessional and inappropriate language during his morning safety meeting held by Surfacing Supervisor N. Mayes after being asked multiple times to stop was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-ATLA-17-02-SG-086 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Johnson 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 compensation for: (1) 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); (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 January 26, 2004 as a trackman and thirteen years later on Monday, January 30, 2017 was performing as the Lead Tamper C-Series Machine Operator on the S-12 Surfacing Gang on assignment at Cordele, Georgia.

The gang was assembled trackside just outside the track supervisor's office at 7:00 A.M. when the Supervisor of the S-12 Gang began his Monday morning safety meeting. The Supervisor recalled that at about 7:15 A.M. he opened the meeting up for any questions, comments or concerns from the gang. One of the Surfacing Foremen who had been operating a tamper and had just been removed from the machine to work the ground brought up a concern at that time. He mentioned to the lead tamper operators (there were two) that if they wanted to work through their lunch that they needed to tamp every tie or every other tie so that they wouldn't get too far ahead of the gang.

Claimant testified that this instruction seemed to him to single him out and embarrassed him. Claimant, the record shows, reacted to the instruction by launching into an expletive-laden rant lasting 45-50 seconds. The Supervisor explained that he told Claimant once, twice and finally a third time to stop to no avail. Finally, the Supervisor threatened Claimant that one more word and he would have to take Claimant out of service at which time Claimant stormed off to cool down. Later, the

Claimant revealed, he found the Supervisor and apologized to him. Claimant worked the remainder of that day.

The Supervisor recalled that he discussed the situation with his General Division Engineer and Process Engineer and was inclined to send Claimant a letter of counsel but then discovered that Claimant had been counselled on December 15, 2016 regarding similar conduct so the Supervisor decided to take Claimant out of service pending an investigation concerning conduct unbecoming an employee. Claimant was found to be guilty as charged and dismissed.

The Board has reviewed the record in its entirety and finds it baffling that Claimant was described by his supervisors as a safe, efficient, model employee. While that may be true, it is not Claimant's work habits that need to be modified, but rather his conduct. The Claimant here knows he was wrong and admitted so. While cursing is tolerated as shop talk in the rail industry, cursing at someone is not, particularly not in response to supervision giving instructions. Claimant's lengthy disciplinary record certainly does not mitigate against dismissal in this instance. Claimant's conduct was a dismissal offense.

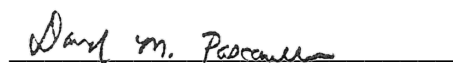
However, Claimant's strong work ethic and superior performance convinces the Board to allow Claimant one more chance to redeem his career with the Carrier. Claimant shall be reinstated with no compensation for time out of service but with seniority unimpaired. And, while being out of service for almost two (2) years is a severe discipline we hope that it is sufficient to impress upon the Claimant that this is not the type of conduct that will be tolerated in the future.

**AWARD:**

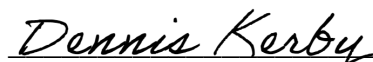
Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty (30) days following the date that two members of this Board affix their signatures hereto.



Richard K. Hanft, Chairman and Neutral Member



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.