

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)
DIVISION – IBT RAIL CONFERENCE)

) Case No. 279

NORFOLK SOUTHERN RAILWAY COMPANY)
(FORMER SOUTHERN RAILWAY COMPANY))

) Award No. 279

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. M. Massengill, issued by letter dated June 25, 2017, in connection with his alleged failure to follow instructions and failure to protect his assignment in that, despite being previously counseled, he was absent from his laborer assignment on the R-11 Rail Gang without authorization from the proper authority on February 18, 2016 was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-CN-16-08-SG-181 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Massengill 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 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, 1992 and had twenty-four (24) years' service at the time of his dismissal. He has worked a Machine Operator, a Track Inspector and a Laborer over his tenure with the Carrier. Claimant testified that he has been restricted from performing some jobs due to a seizure disorder diagnosed some ten (10) years ago. Claimant further testified that he has suffered from and been under a doctor's care for sleep disorders since 2008. Claimant stated that he has submitted all of his medical records to the Carrier's Medical Department. Claimant further testified and it should be noted that from his date of hire in 1992 until 2014, twenty-two years, he had an unblemished disciplinary record.

Claimant's problems began, the record reflects, shortly after the onset of his seizure and sleeping disorders. Claimant was issued Letters of Counsel, which are not formal discipline, for being absent without permission in October, 2010, November, 2012, July, 2014 and October 2014. Claimant then began receiving progressive discipline for absenteeism with a five (5) day suspension two days after his Letter of Counsel in October, 2014; a ten (10) day suspension seven days later in October, 2014; a twenty (20) day suspension in December, 2014; and a thirty (30) day suspension in September 2015. Again, Claimant received a Letter of Counsel for being absent without permission on December 12, 2016. Claimant was ultimately dismissed for failure to follow instructions and failure to protect his assignment on February 18, 2016.

Reviewing Claimant's disciplinary record, it cannot be said that the Carrier has not worked with the Claimant and used progressive discipline to try to correct Claimant's

absenteeism problems. Just as obvious, however, is Claimant's unintentional inability to report for duty on a regular and punctual basis due to his medical problems. The Board notes Claimant's twenty-two (22) years of exemplary service prior to 2014. Nevertheless, the Carrier cannot be expected to tolerate chronic absenteeism.

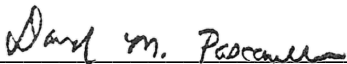
The Board concludes to reinstate Claimant to service without compensation for time out of service with seniority unimpaired subject to Claimant's ability to satisfy fitness for duty requirements and with the strongest admonition for Claimant to look into an occupational disability.

AWARD:

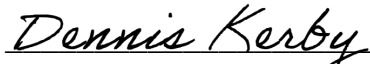
Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty (30) days following the date that two members of this Board affix their signatures hereto.



Richard K. Hanft, Chairman and Neutral Member



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.