

**NATIONAL MEDIATION BOARD**

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)

DIVISION – IBT RAIL CONFERENCE )

) Case No. 280

) Award No. 280

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 Company) of Mr. J. Vinyard, issued by letter dated May 15, 2017, in connection with his alleged: (1) failure to protect his assignment in that on April 18, 2017, he was absent without permission; and (2) failure to follow instructions in that he failed to provide at least one (1) hour advance notice to supervision that he would be unable to report to work on April 18, 2017, despite having been previously counseled and instructed to do so, was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-CN-17-12-LM-297 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Vinyard 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 1, 2007 and had an unremarkable disciplinary record until the end of 2014. Beginning in November, 2014 and over the next eighteen (18) months, Claimant was assessed one hundred (100) days of progressive and cumulative suspensions for five (5) separate incidences of being absent without permission and failing to follow instructions.

During the next year, 2016, it seemed that the progressive discipline was having the desired effect and Claimant had no attendance problems of record. On April 11, 2017 Claimant received a Letter of Counsel relative to protecting his assignment.

A week later, according to the record, on Monday, April 17, 2017 Claimant contacted his supervisor at least one (1) hour before the start of his shift as required and requested permission to be absent.

Summarizing the testimony given during the investigation on the property, Claimant began experiencing pain in a tooth on Sunday night, April 16, 2017 and wasn't able to sleep. He called his supervisor as required on Monday morning, explained the situation and requested time off to see a dentist. Claimant added that he may come in to work after his dentist appointment. The supervisor approved Claimant's absence and asked the Claimant to apprise him of the outcome of the appointment.

Claimant neither saw a dentist nor did he call the supervisor back on Monday, April 17, 2017. Nor did he call to request off on Tuesday, April 18, 2017. Instead, Claimant explained, he took some pain medication after talking to his supervisor on Monday morning and went to sleep and slept through the workday on Tuesday, April 18. Claimant did contact his supervisor on Wednesday, April 19, 2017 to let him know that he was feeling better and would be reporting for duty, but Claimant was informed that he was taken out of service for failing to protect his assignment and failing to notify his supervisor that he would be absent on Tuesday April 18, 2017.

But for Claimant's history of no call/no show the Board could be more sympathetic toward the Claimant's current situation. If this were an isolated incident Claimant's excuse would be much more plausible. Just when it seemed that one hundred (100) days of suspensions without pay was finally starting to take hold and Claimant was able to provide almost a year of good service, he draws a Letter of Counsel and a week later ignores the counseling and misses without calling off.

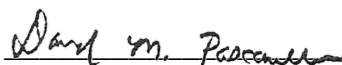
Due to the unique circumstances involved in this most recent incident of failure of Claimant to protect his assignment and follow instructions for calling off when necessary, the Board has determined to reinstate Claimant to service without compensation for time out of service and with seniority unimpaired. Hopefully Claimant's time out of service and loss of pay and benefits will bolster his understanding of his obligation to protect his assignment and keep supervision apprised of his status and will cause him to work toward putting forth his best effort going forward to protect his assignment.

**AWARD:**

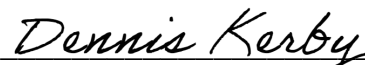
Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty (30) days following the date that two members of this Board affix their signatures hereto.



Richard K. Hanft, Chairman and Neutral Member



D.M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.