

**NATIONAL MEDIATION BOARD**

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)

DIVISION – IBT RAIL CONFERENCE )

) Case No. 281

) Award No. 281

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 (dismissal) of Mr. N. McCoy, issued by letter dated May 24, 2017, in connection with his alleged improper performance of duty in that while he was operating a spike loading machine (#SLM13020) in the vicinity of Mile Post 255.5, he failed to stop within half the range of vision and collided with a spike puller machine stopped on the track ahead of him, resulting in a collision that pushed four (4) additional spike puller machines into the tie crane stopped ahead of the gang, causing damage to the equipment and further resulting in a fellow employee being injured when he was knocked to the ground in the gauge of the track by the force of the impact at approximately 9:30 A.M. on Thursday, April 20, 2017 was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-CN-17-13-SG-308 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant N. McCoy shall be reinstated to service with all seniority rights restored and all entitlements to and credit 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 Claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by Claimant while wrongfully removed); (2) any 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 has seniority dating back to November 4, 2004 and has held Machine Operator seniority since 2006. Claimant was operating a Scrap Loading Machine on the Timber and Surfacing Gang #1 on April 20, 2017.

Claimant's gang was tramping down the mainline from milepost 261.4 to CP Tunnel 26 at Milepost 255.5 where they were instructed to stop. The consist of machines was composed of a Ballast Regulator leading, followed by a Tie Handler Machine, four Spike Pullers and the Claimant's Scrap Loading Machine coming up the rear.

As the consist reached CP Tunnel 26 where they had been instructed to stop, the first six (6) machines, in turn, stopped. Claimant did not stop his machine and caused a chain reaction of collisions impacting all machines in the consist. Moreover, the operator of the Spike Puller two machines ahead of Claimant's Scrap Loading Machine had dismounted his machine upon stopping and was crossing the gauge of the track to power down his machine when the collision occurred and was struck by and knocked under his machine. That Machine Operator was injured and taken to the hospital.

Claimant, who has never been involved in any incident of this sort over his tenure with the Carrier and has an unblemished disciplinary record admitted responsibility and was remorseful. His only explanation for causing the collision was that at the precise moment when he should have been stopping he turned and knocked over a bag containing tools that then fell off of a ledge in the cab of his machine and onto the brake. Claimant testified that when he reached around to grab the bag of tools he took his focus off what he was supposed to be doing to grab the bag and when he looked up again, it was too late and he couldn't get stopped.

As a consequence of Claimant's improper performance of duty and the results thereof, Claimant was dismissed from service.

Rule 812 provides that "On-track equipment must at all times be prepared to stop within half the range of vision." Incidents such as this involving physical injury to co-workers and substantial damage to equipment underscore Machine Operators' obligations to make sure to diligently follow all safety rules.

The Board resolves that given Claimant's immaculate career record that dismissal is too severe a discipline given the particular facts of this dispute. Accordingly, Claimant shall be reinstated with seniority unimpaired but without compensation for time out of service and with the restriction that Claimant shall not exercise his Machine Operators seniority for a period of nine (9) months after the effective date of this Award.

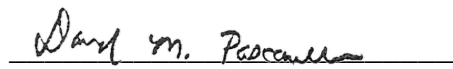
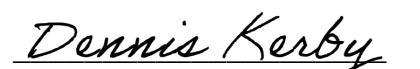
**AWARD:**

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.



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Richard K. Hanft, Chairman and Neutral Member

  
D. M. Pascarella, Labor Member  
D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.