

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1049

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

) Case No. 282

) Award No. 282

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 (dismissed in all capacities from Norfolk Southern) of Mr. J. Bixler, issued by letter dated September 11, 2017, in connection with his alleged improper performance of duty in that on August 2, 2017 at approximately 11:10 A.M., while he was assigned as a Spike Loading Machine Operator near Mile Post CD 487, he fouled a live track by standing in the six (6) feet between his machine and Main One despite being notified by his foreman that a train was approaching his work area was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-CN-17-30-SG-594 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Bixler shall be reinstated to service with all seniority rights restored and all 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 February 26, 2005 and was most recently assigned to the Tie and Surface Gang #24 as a Spike Puller Machine Operator near Burns Harbor, Indiana. On August 7, 2017 Claimant and his gang were working between CP 487 and CP 490. Claimant’s workgroup was working on the CP 487 switch. Shortly after work began, the Roadway Worker in Charge notified the Claimant’s foreman that a train needed to be cleared through the work zone and the foreman ordered the gang to clear the switch and the track. Claimant, the Assistant Supervisor related, was ordered to pull away from the switch and stay in the clear of the foul.

Claimant, while his machine was in the clear, exited the machine to secure tools on the front of his machine, inadvertently placing himself in the foul of the live adjacent track. After observing Claimant fouling the track the Assistant Supervisor removed Claimant from service.

Claimant explained the incident through a somewhat different lens. He recalled that no one had advised him that a train had been cleared through the work zone. As he remembered, the foreman instructed him to bring a claw bar to the switch to pull guardrail spikes. The Claimant related that when he pulled his machine to

the switch and went around to the front of the machine to retrieve the tools that the hinge on the rack holding the tools broke. The foreman approached the machine, helped Claimant remove the tools and they discussed calling a mechanic to repair the broken hinge. Claimant accompanied the foreman to the switch and together they removed the spikes from the guardrail. After completing that task the foreman instructed Claimant to get his tools and pull his machine high of the switch. Claimant gathered his tools, pulled the machine some 200 feet west of the switch, got out of the cab and walked around to the front field side of the machine to retrieve a bungee cord to better secure the tools in the broken rack. As he walked back around the front of the machine, he realized an oncoming train was bearing down on him and the machine and, instead of walking back around to the field side of the machine to be in the clear, walked in the foul trackside to re-enter the cab of the machine.

Viewing the incident and Claimant's explanation from his point of view in a light most favorable to him, Claimant nevertheless momentarily, when surprised by seeing a freight train bearing down on him, lost situational awareness and instead of retreating back around to the field side of the machine and into the clear subjected himself to imminent danger by stepping into the foul.

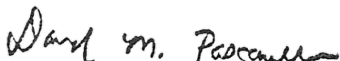
Claimant appeared before the Board and impressed us with his sincere remorse and commitment to safety going forward. That, as well as Claimant's past service record, convinces the Board that Claimant merits a second chance. Claimant shall be reinstated with seniority unimpaired but without compensation for time out of service.

AWARD:

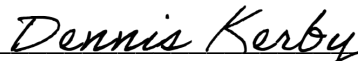
Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty (30) days following the date that two members of this Board affix their signatures hereto.



Richard K. Hanft, Chairman and Neutral Member



D. M. Pascarella, Labor Member



D. L. Kerby, Carrier Member

Dated at Chicago, Illinois, February 21, 2019.