

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 287
)	
and)	
)	Award No. 287
NORFOLK SOUTHERN RAILWAY COMPANY)	
(FORMER SOUTHERN RAILWAY COMPANY))	

Richard K. Hanft, Chairman & Neutral Member
D. M. Pascarella, Employee Member
S. M. Goodspeed, Carrier Member

Hearing Date: July 24, 2019

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. N. Owens, issued by letter dated August 29, 2017, in connection with his alleged improper performance of duty which occurred at approximately 10:00 A.M. on July 24, 2017, at the Cox Road Crossing, Mile Post 396.2, near Charlotte, North Carolina, when, while operating Ballast Regulator BR05075BX, he failed to be prepared to stop short of the road crossing and collided with a private vehicle, resulting in extensive damage to the private vehicle was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-GNVL-17-18-LM-575 SOU).

2. As a consequence of the violation referred to in Part 1 above, Claimant N. Owens 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 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 employe for work Claimant could have bid on and performed 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:

Upon the whole record and all of the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

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 was a seven (7) year employee who established Machine Operator seniority in 2013 and on the day of the incident giving rise to this dispute was operating a Ballast Regulator on the Smoothing Gang SM-555.

Claimant was following a Hi-Rail truck and a Tamper Machine on July 24, 2017 as they were tramping northbound on Main One in double track territory. As the consist approached the grade crossing at MP 396.2, the Cox Road crossing near Gastonia, North Carolina, the gates and flashers were activated, and the Hi-Rail truck and Tamper made it across the grade crossing safely.

The Cox Road crossing is a four-lane road with a median and is equipped with four (4) quadrant gates and flashers. A dash-cam video introduced at the investigation showed when Claimant approached the grade crossing in the Ballast Regulator the crossing gates were in the upward position, the lights were not flashing, and vehicle traffic was moving across the crossing prior to the Claimant entering the crossing. Four (4) vehicles crossed over the crossing prior to Claimant colliding with a fifth vehicle entering the foul of the track.

Claimant was summoned to an investigation held on the property on August 18, 2017 to determine his responsibility in connection with improper performance of duty in not following Carrier's Operating Rules. Claimant was found to be guilty of the charges and after review of Claimant's service record, the Hearing Officer determined to

dismiss Claimant. Claimant was notified of his dismissal by letter dated August 29, 2017.

The Board has reviewed the record developed on the property including the dash-cam footage introduced during the investigation. We find that there was substantial evidence to support the findings made on the property.

Moreover, after reviewing Claimant's service record, the Board would be remiss to return Claimant to a Machine Operator position in that over the past four years, Claimant has been disciplined for collisions involving Carrier vehicles on four occasions and previously disqualified as a Ballast Regulator Operator for a period of one year. Corrective discipline seems to have no effect on deterring Claimant's carelessness in operating Carrier equipment.

Nevertheless, the Organization argues that this employee is redeemable and that dismissal is excessive discipline given the circumstances. The Organization contends that Claimant could be a productive employee even if he were returned to service in a position that does not require operating Carrier's on-track machinery.

The Board determines that dismissal in this matter was excessive. For that reason, the Carrier is directed to reinstate Claimant to service with seniority unimpaired, but without compensation for time out of service and with forfeiture of Claimant's Machine Operator seniority.

AWARD:

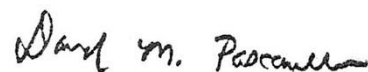
Claim sustained in accordance with findings.



Richard K. Hanft, Chairman



S. M. Goodspeed, Carrier Member



D. M. Pascarella, Labor Member

Dated at Chicago, Illinois, August 26, 2019.