

NATIONAL MEDIATION BOARD
SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYEES DIVISION – IBT RAIL CONFERENCE)	Case No. 291
)	
and)	
)	Award No. 291
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 [thirty (30) day actual suspension] of Mr. T. Davis, issued by letter dated July 18, 2017, in connection with his alleged improper performance of duty in that on June 7, 2017 while assigned as the RWIC for the ATN Railroad contractors near Birmingham, Alabama, he failed to hold a proper job briefing with the dispatcher as required for running conditional stop signs and also failed to ensure that the dispatcher had applied protective blocking to the power switches within the working limits of the conditional stop signs, resulting in the dispatcher lining Train AB10 into the working limits without contacting him as the RWIC was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-BHAM-17-15-LM-437 SOU).

2. As a consequence of the violation referred to in Part 1 above, Claimant T. Davis shall have his suspension set aside with all notations thereof removed from all Carrier records and he shall also be restored all financial and benefit losses, such as vacation and health insurance benefits (including coverage under the railroad industry national plan) occasioned as a result of the violation, including: (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 suspension from service (this amount is not reduced by earnings from alternate 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 suspended from service or on overtime paid to any junior employee for work Claimant could have bid on and performed had Claimant not been suspended 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 suspended.”

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 entered the Carrier's service on June 28, 2010 and had seven (7) years' unblemished service at the time giving rise to this dispute, June 7, 2017. Claimant was assigned and working with the Track Maintenance Gang TM-307 as a Foreman at Pell City, Alabama.

On the evening of June 6, 2017 Claimant received a text message from his supervisor advising him that on the next day that he would be needed to act as Roadway Worker in Charge ("RWIC") and run a Form Y for ATN Railroad contractors working on the diamond at the AGS #2 and 27th. Street interlocking. This would be Claimant's second time running Form Y protection.

Claimant reported for duty at Pell City at 6:30 AM on June 7, 2017 and had a job briefing with his supervisor, who had bulletined the Form Y the previous evening. Claimant testified that his supervisor told him the locations to put the boards up and to put locks on the hand throw switches within the Form Y limits. Claimant, when questioned on the record, testified that the supervisor specifically did not tell him to make sure that he blocked out the power switches. Claimant testified that he thought the switches within the limits were controlled by the Dispatcher, subject to his

permission. Claimant testified that he has never attended a class covering Form Y protection.

Claimant related that he left Pell City after job briefing with his supervisor and arrived in Birmingham, where the job was located, at approximately 7:30 AM. Claimant testified that he and another employee began placing the boards where his supervisor had instructed, using the watchman lookout method of protection. Claimant related that he began trying to reach the dispatcher on both the phone and the radio at 7:40AM for work beginning at 8:00AM, but that she failed to respond to either form of communication.

At approximately 8:12 AM Claimant testified that as he and his co-worker were putting up the stop boards that he heard the Dispatcher tell a train over the radio that she hadn't heard anything about a Form Y and to just proceed through the limits and, upon hearing those instructions from the Dispatcher, he tried to call her again, and that she finally answered the tone.

The Track Supervisor for the Birmingham area overheard the conversation between the Dispatcher and the Claimant and began to investigate.

As a result of the Track Supervisor's findings, Claimant was charged with Improper Performance of Duty in that, as an RWIC, he failed to hold a proper job briefing with the Dispatcher as required for running conditional stop signs and also failed to ensure that the Dispatcher had applied protective blocking to the power switches within the limits of the conditional stop signs and as a result, the Dispatcher aligned Train AB10 into the working limits without contacting him as the RWIC.

Claimant was summoned to a formal investigation held on June 29, 2017 and was found guilty of Improper Performance of Duty and suspended for a period of thirty (30) days.

Claimant in this matter is undoubtedly guilty of the charges brought against him. He admitted at the investigation to the same. It is equally apparent that Claimant's culpability is concern for the Board's consideration, as he followed his supervisor's instructions to the "T". Had he not, he would have been guilty of failing to follow instructions.

Claimant was untrained, relatively inexperienced, improperly briefed and precisely followed the instructions given to him. Hence, the Board finds that while the charges against him were proven, the discipline assessed, given the mitigating factors that Claimant followed the orders given him and that there was no intent to violate the

rules abate his violations and require a reduction in the discipline assessed. Upon careful consideration of the circumstances involved in this matter, the discipline assessed shall be reduced to a fifteen (15) day suspension.

AWARD:

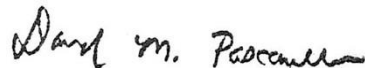
The Claim is sustained in accordance with the findings.



Richard K. Hanft, Chairman



S. M. Goodspeed, Carrier Member



D. M. Pascarella, Labor Member

Dated at Chicago, Illinois, August 26, 2019.