

**NATIONAL MEDIATION BOARD**

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

BROTHERHOOD OF MAINTENANCE OF WAY	)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE	)	Case No. 294
	)	
and	)	
	)	Award No. 294
NORFOLK SOUTHERN RAILWAY COMPANY	)	
(FORMER SOUTHEN RAILWAY COMPANY)	)	

Richard K. Hanft, Chairman & Neutral Member  
D. M. Pascarella, Employee Member  
S. M. Goodspeed, Carrier Member  
Hearing Date: December 10, 2020

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

1. The Carrier’s discipline [sixty (60) days actual suspension] of Mr. J. Henry, issued by letter dated January 5, 2018 in connection with his alleged improper performance of duty in that while assigned to operate an MK IV Tamper Machine (ET09001J4J) on the TS-24 Tie Gang, he failed to stop short of the crossing at Mile Post M-625.1, resulting in the MK IV Tamper Machine that he was operating striking a privately owned tractor trailer entering the crossing and resulting in damage to both vehicles at approximately 10:55 A.M., in the vicinity of Geneva, Georgia, on November 27, 2017, was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-ATLA-17-38-SG-863 SOU).
  
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Henry shall have his suspension set aside with all notations thereof removed from all Carrier records and he shall also be restored all seniority and all financial and benefit losses, such as vacation and health insurance benefits 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:

On November 28, 2017 there was a collision at Milepost M-625.1 near Geneva, Georgia. It involved the Carrier’s MK IV Tamper and a privately owned tractor-trailer. According to the Carrier, the collision was the result of the Claimant failing in his obligations to stop short of the crossing and to not enter the crossing until the way is clear.

Those obligations, that the Claimant testified he is aware of are spelled out in the Carrier’s Operating Rule 813:

**813 – HIGHWAY GRADE CROSSINGS; WARNING DEVICES**

- a.) On-track equipment approaching a highway grade crossing must be prepared to stop short and must not enter the crossing until the way is known to be clear.

The Organization maintains that the record does not establish that the Claimant violated the Rule. Instead, the Organization argues, the Claimant brought the machine to a stop forty (40) feet in advance of the crossing, looked both ways, seeing no traffic approaching from either direction, let off the machine’s brakes and slowly approached the crossing. Just as the machine was about to enter the crossing, a semi tractor-trailer crested a hill on the east and despite the flashing warning signals, entered the crossing. Claimant testified that he applied the machine’s brakes but that it slid into the crossing and colliding with the rear of the trailer.

The Carrier maintains that despite the Organization’s best arguments, the fact remains that when the Claimant saw the tractor-trailer enter the crossing, he was unprepared to stop short of the crossing because the tamper, without doubt, entered the crossing and impacted with the truck’s trailer.

The Board determines that the Carrier met its burden of proof and must uphold its decision made on the property. However, when the Board considers the mitigating factors of the Claimant having a relatively long tenure and this being the only blemish thereto, we find that the

discipline assessed in this instance was inconsistent with past handlings of first-time machinery collisions on this property and thus excessive. The Board orders that the discipline be reduced to a thirty (30) day suspension and Claimant be made whole consistent with the findings.

AWARD: Claim sustained in part and denied in part.



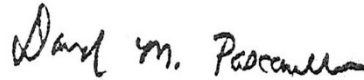
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Richard K. Hanft, Chairman



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S. M. Goodspeed  
Carrier Member



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D. M. Pascarella  
Employee Member

Dated at Chicago, Illinois, February 3, 2021