

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	Case No. 295
)	
and)	
)	Award No. 295
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: December 10, 2020

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

1. The Carrier’s discipline [thirty-one (31) day actual suspension] of Mr. S. Steelman, issued by letter dated March 14, 2018, in connection with his alleged violations of Norfolk Southern Safety and General Conduct Rules and Operating Rules in that at approximately 5:45 A.M. on Sunday, February 11, 2018, while hi-railing in Norfolk Southern Vehicle #210655, he collided with a private vehicle at Greenpond Road crossing Mile Post 29.4A was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-BLUE-18-22-LM-082 SOU).

2. As a consequence of the violation referred to in Part 1 above, Claimant S. Steelman 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 been 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:

This matter concerns a veteran of almost thirty-two (32) years who was called out on a stormy night in February to inspect track where an automobile missed the crossing. The call out came at 8:50 p.m. and after completing the inspection, he was asked to help patrol another section of track due to flood warnings associated with the storm. As he approached a grade crossing at Greenpond Road in Carrier's Hyrail vehicle he saw a vehicle approaching the crossing from the left. Claimant testified that he had slowed the Hyrail vehicle from 15 mph to about 5 mph as he approached the crossing. The Claimant testified at the investigation held on the property that he watched the vehicle on the road slow to a crawl and assumed that the driver was going to yield right of way to him. As Claimant began to enter the crossing, he saw the vehicle to his left enter the crossing. Claimant testified "...I seen him coming, applied the brakes and couldn't stop."

Operating Rule 813 commands: 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 Hearing Officer on the property found that Claimant was culpable of not being prepared to stop short of the crossing and entering a crossing without knowing the way to be clear.

The Organization argues that the Carrier failed to meet its burden of proof and that the discipline assessed was arbitrary and unwarranted.

The Carrier submits that it certainly proved the violation due to the fact that the Claimant admitted to the violation. Further, the Carrier contends that based on the circumstances, the Carrier's determination to assess a time served thirty-one (31) day

suspension was entirely appropriate and in fact may have justified even more stringent discipline and should not be disturbed.

The Board concludes that there was sufficient evidence adduced to support the conclusion reached by Carrier as to Claimant's culpability.

While a thirty-day suspension for a first-time machinery collision has been found by this Board on this property repeatedly to be an appropriate first step discipline given the gravity of the possible consequences of machinery collisions, in this particular incident, we find mitigating circumstances in the record.

Claimant, a thirty-two (32) year veteran with an unblemished record was called out from his home at 9:00 at night during a storm of some significance to come check the infrastructure to be sure that it was safe for trains to traverse. He was thereafter pressed to continue the rest of the night patrolling due to expected flooding conditions due to the storm. Despite Claimant's admitted lapse in judgement at the Greenpond crossing, it appears Claimant was operating as safe as possible given the prevailing conditions, as he had for the prior thirty-two (32) years.

Accordingly, the Board finds that in this particular instance and given Claimant's sterling record, a thirty-one (31) day suspension was unwarranted and orders the discipline to be reduced to fifteen (15) days and Claimant be made whole in accordance with the findings.

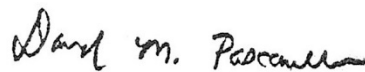
AWARD: Claim sustained in part and denied in part.



Richard K. Hanft, Chairman



S. M. Goodspeed
Carrier Member



D. M. Pascarella
Employee Member

Dated at Chicago, Illinois, February 3, 2021