

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	Case No. 296
)	
and)	
)	Award No. 296
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 (dismissed from all service with Norfolk Southern Railway Company) of Mr. M. Jones, issued by letter dated December 3, 2018, in connection with his alleged failure to protect his assignment and failure to follow instructions, in that despite being counseled multiple times, he was absent from his assignment without permission from the proper authority from October 22 through October 24, 2018 was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-ATLA-18-33-LM-642 SOU).

2. As a consequence of the violation referred to in Part 1 above, Claimant M. Jones shall have his dismissal set aside with all notations thereof removed from all Carrier records and he shall also be restored to the Carrier’s service with all seniority and restored to 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 removal from service (this amount is not reduced by earnings from alternate employment obtained by Claimant while wrongfully dismissed); (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 been not been unjustly dismissed.”

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 March 1, 2010 and at the time giving rise to this matter was serving as a foreman on a floating gang headquarters out of Gordon, Georgia.

It is undisputed that Claimant requested on October 12, 2018, and was granted by proper authority, accrued vacation time for the week of October 15 through October 19, 2018.

Claimant desired additional vacation the following week and testified that he did not have access to a telephone so instead asked another employee to get in touch with supervision and inform them that he would be taking more time off. There is no dispute that the Assistant Track Supervisor spoke to Claimant’s co-worker and said he would send the message “up the ladder.” Claimant testified that he never spoke to a supervisor about the additional days of vacation and that he was aware that one needed to talk to a supervisor personally to arrange vacation time. Claimant further testified that he had been counselled about protecting his assignment in the past.

There is no question that the Carrier proved the violations at the investigation on the property by substantial evidence because the Claimant admitted that he knew that he had to speak to a Supervisor personally to arrange vacation time, he did not speak to a supervisor and he was off on vacation on October 22, 23 and 24 without permission from proper authority.

Moreover, the Claimant admitted that he had previously been counseled about protecting his assignment.

The Organization asserts that Claimant was here deprived of his procedural rights and protections due to the fact that the Carrier charged the Claimant without reference to the precise rule that the Carrier believed the accused employee might have been in violation of by his alleged conduct.

The Board takes notice that the Letter of Charge sent to Claimant stated the following:

“You are hereby notified to report...for a formal investigation to determine your responsibility, if any, in connection with your failure to protect your assignment and failure to follow instructions, in that, despite being counseled multiple times, you were absent from your assignment without permission from proper authority from October 22 through October 24, 2018...”

The Organization argues that because the Carrier did not introduce General Conduct Rule 919 until the presentation of the Carrier’s case on the property that the Organization was “blind-sided”, and the procedural rights of the Claimant were compromised.

This Board has previously found and it is an industry standard that to comply with the Agreement, Carrier is to provide notice of the charge in sufficient detail to enable the accused to prepare a defense. See SBA 1049, Award No. 159 (Campagna, 2007) (The charge was sufficiently precise so as to inform Claimant of the nature of the incident giving rise to the charge as well as providing the Organization with the opportunity to prepare its defense.); Third Division Award 16344 (The Board has held in numerous Awards that the purpose of rules such as 9(a) (requiring precise charges) is not to create technical loop holes to permit an employee to escape discipline but to enable him to prepare his defense so that he is not mislead, deceived or taken by surprise.)

The above-stated Letter of Charge, the Board finds, clearly contained sufficient specificity to enable Claimant to prepare his defense.

We find no mitigating circumstances in the record. In fact, Claimant’s past service record reinforces the Board’s conclusion that the discipline imposed was neither arbitrary, capricious or excessive.

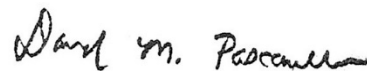
AWARD: Claim denied.



Richard K. Hanft, Chairman



S. M. Goodspeed
Carrier Member



D. M. Pascarella
Employee Member

Dated at Chicago, Illinois, February 3, 2021