

**NATIONAL MEDIATION BOARD**  
**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

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BROTHERHOOD OF MAINTENANCE OF WAY	)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE	)	Case No. 300
	)	
and	)	
	)	Award No. 300
NORFOLK SOUTHERN RAILWAY COMPANY	)	
(FORMER SOUTHERN RAILWAY COMPANY)	)	

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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. J. Young, issued by letter dated September 25, 2018, in connection with his alleged: (1) conduct unbecoming an employee in that he collected or attempted to collect compensation for travel time and/or mileage to which he was not entitled to receive on July 1, 3, 5, 6, 7, 8, 9, 12, 13, 14, 15 and 20, 2018; (2) conduct unbecoming an employee in that he collected or attempted to collect compensation in excess of the actual time and/or mileage traveled on July 1, 3, 5, 6, 7, 8, 9, 12, 13, 14, 15 and 20, 2018 and failed to notify supervision of the payments to which he was not entitled; and (3) improper performance of duty in that, as Foreman of the gang, he failed to perform his duties of entering payroll was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-BHAM-18-21-LM-462 SOU).
  
2. As a consequence of the violation referred to in Part 1 above, Claimant J. Young 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:

This matter concerns the foreman of the TM-506 “Spur Gang” headquartered in Chattanooga, Tennessee. Claimant had almost ten years of service with the Carrier at the time of the activity giving rise to the discipline being appealed.

On or about July 1, 2018 and through July 20, 2018, TM-506 was assigned to assist with a derailment in Pell City, Alabama. Two (2) of the gang members moved the Company’s gang truck and the material handling truck to Pell City while a third member followed in his personal vehicle. Upon arriving at Pell City, the two co-workers were transported by the gang member with his personal vehicle back to their personal vehicles back in Tennessee where they started and all three returned in their personal vehicles to Pell City.

Gang members of traveling gangs such as TM-506 are compensated for their travel time and personal vehicular expenses in addition to their regular and overtime wages.

Claimant, the foreman of Gang TM-506, testified that earlier, he had been away from the gang on personal leave and one of the laborers in the gang had assumed responsibility for entering time and expenses into the Carrier’s payroll system during his absence. Upon Claimant’s return from leave, the record reflects, the laborer continued, by mutual consent, to enter the gang’s time and expense data.

For time and expenses during the time period identified above, it is undisputed that the laborer entered exorbitant and undue time and expense claims for all members of the gang. The dubious claims were noticed by and raised suspicions with the Assistant Division Engineer

("ADE") during a routine spot check of payroll for random gangs operating on his territory on August 4, 2018, one day after funds claimed had been deposited into the gang members' accounts. The ADE arranged to interview the laborer who had entered the false time and expense claims and the Claimant on August 7, 2018 to get to the bottom of what he saw on the payroll reports the Friday prior and after discussing the situation, charged the employees who each attended an investigation on the property to determine their responsibility, if any, regarding this situation. Claimant was found to be guilty of collecting or attempting to collect compensation that he was not due and failure to perform his duty as a foreman to enter payroll for the members of Gang TM-506 and failure to notify supervision of the overpayment.

The Carrier contends that the testimony and evidence presented at the formal investigation held on the Property conclusively demonstrates that Claimant collected or attempted to collect compensation he was not due including compensation for Travel Time, Mileage, Mileage for Change of Headquarters and Overtime. Moreover, it was further shown that Claimant failed to properly perform his duties as a foreman because he did not enter payroll for the members of his gang or to review the payroll that was entered for the gang.

The Organization opines that because this case involves allegations of moral turpitude via payroll fraud, the Carrier is held to a higher standard of proof of clear and convincing evidence at the very least. The Organization asserts that this evidentiary record fails to establish that the Claimant violated the rules he is charged with.

There is no doubt in this matter that the Claimant received compensation that was not due him on the July 20 and August 3, 2018 deposits into his bank account, failed to report the same to supervision, and failed to fulfill his responsibilities as a foreman to enter the time for his gang. He admitted the facts proving those charges. In his written statement given August 7, 2018, the Claimant states that he 'failed to keep a look on payroll' and that in the end, he was "just as responsible as" the laborer entering the fraudulent payroll data. Also, in that statement, Claimant admitted that he knew something was wrong, but failed to follow up on it. Claimant additionally received pay for performing hot weather inspections on July 1, 13 and 15 when in fact, the Claimant performed no hot weather inspections for any supervisor on the Alabama Division during the entire month of July.

Hence, the Board concludes that there was sufficient evidence adduced at the investigation to support the conclusion reached by the Carrier on the property as to Claimant's culpability.

The evidence in the record clearly established that Claimant engaged in conduct unbecoming an employee in that he collected or attempted to collect compensation that he was not entitled to receive and failed to notify supervision of the payment to which he was not entitled and improperly performed his duties as a foreman of the gang when he failed to accurately enter payroll data on behalf of the members of the TM-506 Gang.

AWARD: Claim denied.



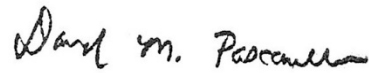
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Richard K. Hanft, Chairman



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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