

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY)	
EMPLOYES DIVISION – IBT RAIL CONFERENCE)	Case No. 303
)	
and)	
)	Award No. 303
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, later reduced to an approximate one hundred and five (105) day suspension] of Mr. T. Brock, issued by letter dated October 22, 2018, in connection with his alleged improper performance of duty in that on September 23, 2018, he obtained Track Authority 2866 with limits between Bishop and Corman on main one (single main) including the CP at Bishop and the CP at Corman and failed to ensure his work group was clear of the aforementioned track limits before clearing Track Authority 2866 at 8:26 P.M. with the dispatcher was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh or excessive (Carrier’s File MW-FTW-18-90-LM-568 SOU).

2. As a consequence of the violation referred to in Part 1 above, Claimant T. Brock 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 involves a track laborer who was serving as the Roadway Worker in Charge (“RWIC”) on September 23, 2018. On that date he was tasked with piloting a Sperry truck to a work location and obtained two track authorities to get the truck where it needed to be.

At 8:23 p.m. the dispatcher contacted the Claimant to inquire where the group was as far as clearing the territory of the first track authority and entering the second.

The Claimant was half of a mile South of the first track limit’s range and ahead of and out of sight of the Sperry truck. Claimant radioed the Sperry truck, asked their position and they told him that they were clear of the first track authority and onto the second.

Claimant radioed the Sperry truck a second time to confirm that they were clear of the first track authority and they confirmed that they were positioned in the second track authority. The Sperry truck then radioed Claimant and said: “You can clear the single track, we are on Track 2 there in Corman, over.”

After the verbal confirmation, Claimant cleared the first track authority at 8:23 p.m.

One minute later, the Sperry truck contacted the Claimant and reported that the switch leading onto the second track authority was lined against them and asked Claimant to contact the dispatcher and ask him to line the switch for Line 2.

Claimant immediately radioed Train 128 NB to bring the train to a stop as there was still a truck fouling the track between the control points that had just been cleared. The Sperry truck set off at a crossing one-tenth of a mile away and Claimant contacted the Track Supervisor to inform him of what had happened.

The Carrier submits that a full and fair investigation was had on October 16, 2018 where Claimant was represented by his Organization and afforded his full due process rights. As a result of the substantial evidence proven at the investigation, Claimant was found guilty of the violations charged and after consideration of Claimant's career service record and the gravity of the Claimant's conduct, he was dismissed on October 22, 2018. On January 2, 2019 Carrier reduced the dismissal to a 105-day suspension.

The Organization contends that Claimant was denied his contractual rights because the Carrier failed to issue a precise charge. This Board has held on numerous occasions that to comply with the Agreement, Carrier is to provide notice of the charge with sufficient detail to enable the accused to prepare a defense. In the present case, the notice clearly contained sufficient specificity to enable the Claimant to prepare a defense.

The specific charges in this matter were clearly proven by substantial evidence. While the Board acknowledges that a RWIC must be able to rely on communication from the group he is piloting it remains the RWIC's responsibility to make sure the track is clear before releasing the track authority thereon.

The Board has determined that the discipline assessed given the particular circumstances presented in this matter was excessive. The Carrier is directed to reduce the penalty assessed to a suspension of forty-five (45) days and to make Claimant whole consistent with the Findings.

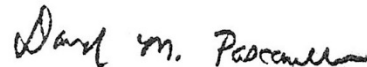
AWARD: Claim sustained in part, denied in part.



Richard K. Hanft, Chairman



S. M. Goodspeed
Carrier Member



D. M. Pascarella
Employee Member

Dated at Chicago, Illinois, February 3, 2021