

AWARD NO. 320  
Case No. 320

File No. Prosise-CR-04-19-INV/MW-BHAM-19-17-SG-195 SOU

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

PARTIES ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
          ) DIVISION – IBT RAIL CONFERENCE  
TO )  
      )  
DISPUTE ) NORFOLK SOUTHERN RAILWAY COMPANY  
          ) (FORMER SOUTHERN RAILWAY COMPANY)

**STATEMENT OF CLAIM:**

Claim on behalf of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. C. Prosise, issued by letter dated May 6, 2019, in connection with his alleged failure to follow instructions and failure to protect his assignment on TS-20 Gang, in that, despite being previously counseled, he allegedly failed to report for his assignment at the designated start time without properly notifying and/or receiving authorization from the proper authority on March 26, 2019, was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh and excessive (System File Prosise-CR-04-19-INV/MW-BHAM-19-17-SG-195 SOU).
2. As a consequence of the violation referred to in Part 1 above, Claimant C. Prosise shall now be reinstated to service with all seniority rights restored and all entitlements to and credit for benefits restored including vacation and health insurance benefits, being made whole for all financial losses as a result of the violation including compensation for: (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 removed); (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 not been unjustly removed from service and with all notations of the dismissal removed from all Carrier records."

## FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

On March 26, 2019, Claimant C. R. Prosise was assigned to the TS-20 Gang as a machine operator, with a start time of 06:30. The bus to the work site was scheduled to leave at 06:00. Claimant did not report at that time, and his supervisor did not receive a message from Claimant until approximately 09:00.

By notice dated March 27, 2019, Claimant was directed to attend a formal investigation to determine his responsibility, if any, in connection with failure to protect his assignment in that, despite being previously counseled, he failed to report for his assignment at the designated start time without properly notifying and/or receiving authorization from proper authority.

The hearing was held on April 22, 2019, at which the supervisor testified and provided documentation regarding instances in which he had previously counseled Claimant about protecting his assignment, one such session having occurred March 25, 2019. Claimant testified that he had been staying with his parents rather than at the camp with the rest of the gang, and that he had stopped for food on the way in, but that he then fell asleep in his vehicle and did not wake up until after start time. After the hearing, Claimant was found to be guilty as charged, and by notice dated May 6, 2019, he was dismissed from service.

The Organization first contends that the Carrier failed to comply with the applicable agreement with respect to the notice of discipline, stating that the hearing officer did not refer to any specific evidence in support of his assessment that Claimant was guilty. We have carefully reviewed that argument, however, and we find no procedural barrier in that respect to our consideration of the merits. We find no agreement provision which requires the specificity in a notice of discipline as alleged by the Organization.

With respect to the merits, the Organization maintains that the discipline assessment was excessive and unwarranted. It notes that Claimant had just returned to service after having been dismissed for approximately two years when he was removed from service for an admitted mistake. The Organization asserts that Claimant was honest and forthright about the circumstances surrounding the event, and it submits that Claimant's years of service and his ability to provide experience and value to the Carrier should be taken into consideration. It avers that Claimant's career is salvageable and that the discipline assessment was not proportionate to the circumstances. The Organization concludes that dismissal was not warranted, and that Claimant should be returned to service.

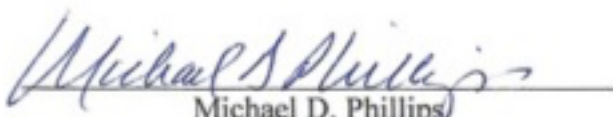
The Carrier, on the other hand, maintains the record contains substantial evidence to support the discipline assessed, stating that there is no question that Claimant was guilty of the charges levied. It asserts that the evidence establishes that Claimant failed to report on time, despite having been counseled twice, including once the very day before the event in question, about reporting for work on time. The Carrier states that SGCR 919 – Reporting for Duty required Claimant to report for duty at the designated time and place, but that there is no question that Claimant failed to do so. It points out that Claimant admitted as much, and it cites prior awards which have held that a charged employee's admission is sufficient to meet the applicable burden of proof.

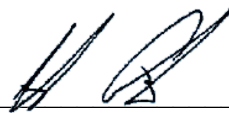
With respect to the level of discipline imposed, the Carrier states that this infraction was a continuation of Claimant's inability to comply with a fundamental employment obligation. It points out that the prior infraction for which he had been dismissed also had involved failure to protect his assignment, and it adds that only days after his return, he again violated SGCR 919 and was assessed a 10-day suspension, which ended only the day before this event. The Carrier emphasizes that Claimant had been counseled multiple times about his reporting obligations, and it cites prior awards which have found that dismissal was warranted when employees have exhibited similar conduct. It states that it is well within its rights to terminate Claimant's employment here as well. The Carrier states that there are no mitigating circumstances which warrant modification of the discipline, and it asserts that dismissal is appropriate on this record.


With respect to the merits, we find that the Carrier has provided sufficient evidence to establish that Claimant was guilty as charged. The facts of the case are essentially undisputed, with Claimant admitting he did not report on time again.

The only real question before us concerns the level of discipline assessed. Claimant's honesty and acceptance of responsibility is noteworthy, and we are not unsympathetic to his personal circumstances. To overturn the Carrier's assessment, however, would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. Perhaps if Claimant's record did not contain multiple previous instances of failing to protect his assignment, including a prior dismissal, we might find otherwise, but on this record, we cannot find that the Carrier's actions were an abuse of discretion, so we will not substitute our judgment for the Carrier's now.

AWARD: Claim denied.

  
Michael D. Phillips  
Chairman and Neutral Member

  
Adam Gilmour  
Employee Member

  
Scott Goodspeed  
Carrier Member

Dated: November 13, 2023