

SPECIAL BOARD OF ADJUSTMENT NO. 1049

CASE NO. 352, AWARD NO. 352

PARTIES) **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION**
TO)
DISPUTE) **NORFOLK SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM

“Claim of the System Committee of the Brotherhood that:

1. The Carrier’s discipline (dismissal) of Mr. M. Caldwell, Sr., issued by letter dated March 15, 2024, in connection with his alleged improper performance of duty in that supervision observed him sleeping while on duty on January 30, 2024, at approximately 11:15 A.M. in Brosnan Yard, Macon, Georgia, was inappropriate and unsubstantiated, unjust, not based upon its meeting its burden of proof, not pursuant to a fair and impartial hearing, in violation of the Agreement, biased, based on nothing but an assumption and workplace retaliation, predetermined, a total overreach, wrongful, unjust and a clear abuse of the Carrier’s power.
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Caldwell, Sr., shall now have ‘... all charges be dropped, stricken from Mr. Caldwell’s employment record, Mr. Caldwell be returned to full service and be made whole with the carrier in all capacities. Also, any letters of counsel, letters of instructions, and any unfavorable marks placed upon Mr. Caldwell’s service record, including the waiver associated with this instance, should be removed from the principal’s service record. The accused should be reinstated with full back pay from the date of the discipline letter dated March 15, 2024, to whatever the future date is that Mr. Caldwell is to be reinstated by the carrier either by award or by mutual agreement between all parties and that Mr. Caldwell be made whole in all capacities concerning health coverage, railroad retirement, and anything else Mr. Caldwell would have the right to claim if Mr. Caldwell had not been wrongfully dismissed from the carrier in all capacities for the Carrier’s unjust actions and alleged violations committed by Mr. Caldwell.” [File: MW-CO-24-05-LM-080 SOU; NMB Code: 103]

FINDINGS AND OPINION

This Board, having jurisdiction over the dispute at issue, finds the parties herein to be employee and carrier, respectively, within the meaning of the Railway Labor Act, as amended. The parties were given due notice of the hearing held.

By notice dated February 2, 2024, Claimant Michai Caldwell, a 17-year Carrier employee, was directed to attend a formal Investigation to determine his responsibility, if any, regarding the charge of “...*Improper performance of duty in that Supervision observed you sleeping while on duty on January 30, 2024, at approximately 11:15 AM in Brosnan Yard, Macon, GA.*” Following the formal Investigation on February 28, 2024, and by correspondence dated March 15, 2024, the Claimant was notified of the Carrier’s conclusion that “...*Based on the evidence adduced at this investigation, you are hereby dismissed from the services of Norfolk Southern Corporation and its affiliates.*” The Organization appealed the Carrier’s disciplinary action, including a discussion of the matter in an on-property conference. Unable to resolve the dispute, the matter is now properly before this Board for final and binding adjudication.

In disciplinary cases such as this, the burden is on the Carrier to prove its case with substantial evidence, and, where it does establish such evidence, to show that the penalty imposed is not an abuse of discretion. The Board has reviewed the evidence of record and the parties’ respective arguments. We carefully considered the procedural objections raised by the Organization and found none that compromised or prejudiced the Claimant’s contractual due process rights in any material way.

On the merits, the record reflects that, on January 30, 2024, the Claimant was assigned as a Flagging Foreman, providing protection for an excavator working in Macon’s Brosnan Yard. According to their written statements and testimonies, at or about 11:15 am, two Carrier supervisors, Messrs. Yarbrough and Mathis, traveling together in separate vehicles, encountered the Claimant’s company vehicle parked, blocking the yard access road. According to Witness Yarbrough, he stopped some 25 feet directly in front of the Claimant’s truck, with Witness Mathis behind him, thinking the Claimant would move over and allow them to pass. Mr. Yarbrough observed the Claimant for

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approximately two minutes, during which the Claimant remained motionless in the driver's seat, facing him but not acknowledging him. Meanwhile, Mr. Mathis used the shoulder of the road to get around them, passing the Claimant's truck slowly. He stopped and backed up (with the vehicle's backup safety alarm sounding) until his driver's window aligned with that of the Claimant, all with no movement or response from the Claimant. After observing for another minute or so with no response, Mr. Mathis exited his vehicle and approached the Claimant's driver's side window. Standing a foot from the Claimant's window for approximately another minute, still with no movement or response from the Claimant, Mr. Mathis knocked on the window several times. At that point, according to Mr. Mathis, the Claimant rolled down his window, appearing groggy and disoriented. When Mr. Mathis asked why he didn't move his vehicle or acknowledge him, the Claimant responded that he didn't see him because he was wearing a face mask. Mr. Yarbrough also testified that while his vehicle was stopped directly in front of the Claimant's vehicle, he was blocking the Claimant's line of sight to the excavator that he was tasked with protecting. Yet, during the approximate four or five minutes that Mr. Mathis said the Claimant's view of the excavator was obscured, Mathis said there was no reaction from the Claimant.

In his written statement and testimony, the Claimant asserted that he did not sleep on the job at any point on the incident date, including when Messrs. Yarbrough and Mathis were observing him. He also asserted that he saw Yarbrough and Mathis drive up and observed Mathis drive around him. As to why he didn't acknowledge Mr. Mathis when he was backed up next to him or when he was standing at his driver's side window, the Claimant responded that he couldn't see Mathis because his facial mask obscured his vision. The Claimant attributed his taking 30 seconds or so to respond to Mr. Mathis' knocking on his window to his being focused on his job. The Claimant contended that, despite Mr. Yarbrough's assertions about his truck blocking his view, he could see the excavator throughout the encounter. The Claimant asserted that, at no point on the incident date, was he in violation of any portion of Safety and General Conduct Rule (SGCR) 919 or Operating Rule 2.

The Carrier argues that two managers observed and provided corroborating testimony that the Claimant was slumped, with his eyes concealed, motionless, and unresponsive for several minutes, which, in their judgment, indicated he was asleep in violation of the Rules. The Organization argues that the Carrier failed to present substantial evidence of the Claimant's culpability. Regarding the resolution of testimonial conflicts and the assessment of credibility, arbitral precedent holds that such determinations belong to the Hearing Officer, who is present, hears the testimony of all parties, and evaluates the veracity and reliability of their statements. It is evident from the Carrier's decision to dismiss the Claimant after the Investigation in this case that his version of the events was not credited, and the testimonies of the two Supervisors were found more compelling. We find no reason to disregard the Carrier's determination and credit the Claimant's denials. Carrier's Operating Rule 2 prohibits sleeping while on duty. SGCR 919 provides that, while on duty, employees will be alert and attentive. Substantial evidence shows the Claimant violated those Rules.

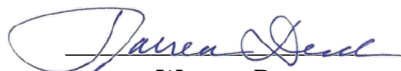
Having established the rule violations, we turn to the quantum of discipline assessed. Sleeping on duty is a serious offense for which dismissal has been upheld in arbitration, even on a first offense. However, a review of the Claimant's record shows that he is no stranger to the discipline process and was dismissed in 2018 for sleeping on duty, only to be reinstated. Regrettably, the Claimant's prior disciplinary actions have apparently not been effective in modifying his behavior. Given the seriousness of the instant violation and the Claimant's disciplinary history, we find that dismissal is neither unreasonable nor arbitrary, nor an abuse of the Carrier's discretion. Therefore, the Board will not disturb it. The Organization's efforts on the Claimant's behalf do not alter that result.

AWARD

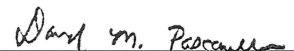
Claim denied.



Adam R. Lively
Carrier Member



Warren Dent
Neutral Member



David M. Pascarella
Employee Member

Dated: 3-10-2026