

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332

Parties to Dispute:

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

-and-

NORFOLK SOUTHERN RAILWAY
COMPANY

AWARD

Case No. 170

Claimant J. V. Cole

STATEMENT OF CLAIM:

“Claim on behalf of Electrician J. V. Cole in Muscle Shoals, Alabama, for reinstatement with seniority rights unimpaired and made whole for all losses sustained. These begin the date removed from service, continue to the present date and include, but are not limited to, lost wages, vacation rights, health and welfare and insurance benefits, pension benefits such as Railroad Retirement and Unemployment Insurance, and any other benefits that would have been earned during the time Electrician Cole is unjustly withheld from Carrier’s service. We also request his personal record be cleared of the matter.”

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

Claimant Cole entered service with Carrier as a Fireman and Oiler in October 2008. On March 22, 2017, he was charged with three counts of unsatisfactory and unsafe performance of his work as an Electrician while working at Carrier’s Locomotive Shop in Sheffield, Alabama. Specifically, Carrier asserted that he had, (1) failed to provide proper protection prior to removing fuel tank filler caps and inserting fuel nozzles into two NS locomotives at 5:40 a.m. on March 17, 2017; (2) failed to wear proper personal protective equipment, including rubber gloves and face shield, while performing the same tasks; and (3) failed to protect a shove in pushing a four-locomotive consist eastward on the same date while fuel supply nozzles were still hanging in fuel filler necks of two locomotives.

On March 29, 2017, Division Manager Mechanical Operations K. S. Krull conducted a formal investigation into the foregoing incidents. On April 13, 2017, he then notified Claimant that he had been dismissed from service. When the ensuing claim protesting that action was not resolved in discussions between the parties it was advanced to arbitration before this Board.

The Organization contends that Claimant's dismissal was unjust, advancing several arguments in support of its position. As an initial matter, it argues that the charges were fatally flawed as a result of the omission of relevant rule language and Carrier's failure to submit evidence of any rule prohibiting respotting of locomotives with fuel hoses attached. Additionally, it notes that one Carrier witness admitted having no knowledge of the procedures which Claimant was alleged to have violated. Lastly, the Organization suggests that Hearing Officer Krull erred by overruling certain objections of Representative Dagnon.

The Board finds those arguments unpersuasive. Carrier's Operating Rule 651: *Display of Blue Signals*; Mechanical Safety Bulletin MSB-004 (Safety Apparel); and Operating Rule 215 *Shoving Equipment at Any Location* are clear directives, and all were clearly breached by Claimant. All violations asserted were observed by two Carrier officials, both of whom testified at Claimant's investigation. Claimant openly acknowledges the governing rules, admits his non-compliance with them, cites no confusion or misunderstanding about what was required of him in connection with his move and states on the record he believed the investigation was conducted in a fair and impartial manner. Lastly, the Board finds no substantive prejudice to Claimant resulting from evidentiary rulings on objections made by its Hearing Officer.

The Board views failure to display a blue signal, wear proper protection and conduct a shove in a manner best designed to prevent damage as implicating serious safety issues. In this instance, those established violations occurred against a background featuring a discouraging service record reflecting four prior disciplinary entries, including three suspensions for negligent shoves, working without blue flag protection and two derailments. With progressive discipline apparently having failed to stimulate change, the totality of the record here, read together with the arbitral precedent cited by Carrier,

supports Carrier's contention that it had just cause to dismiss an employee for willful failure to follow safety rules.

A W A R D

The Claim is denied. Claimant was dismissed for just cause.

Tom Owens

Tom Owens
Employee Member

James E. Conway
James E. Conway
Chairman and Neutral Member

Christopher Carr
Christopher Carr
Carrier Member

Dated: January 2, 2019