

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332

Parties to Dispute:)	
)	
INTERNATIONAL BROTHERHOOD OF)	<u>AWARD</u>
ELECTRICAL WORKERS)	
)	Case No. 171
-and-)	
)	Claimant J. C. Maldonado
NORFOLK SOUTHERN RAILWAY)	
COMPANY)	

STATEMENT OF CLAIM:

“Claim on behalf of Electrician J.C. Maldonado in Roanoke, Virginia, 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 Maldonado 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.

On May 31, 2017, Carrier held a formal investigation to evaluate Claimant’s responsibility for a series of alleged work performance issues and a related charge of falsification of maintenance records. Specifically, on May 1, 2017, it had charged him with failure to follow instructions to inspect and if necessary renew traction motor brushes and to inspect traction motor commutators on NS 9058 on April 24, 2017 and falsification of official company records on April 24, 2017, reflecting completion of work not performed. Thereafter, by letter dated June 15, 2017, Hearing Officer Watkins informed Claimant that he had been dismissed from all service. When the matter remained unsettled in conferences between the parties, this arbitration ensued.

According to the record developed at the formal investigation, Claimant had been assigned to perform routine six-month maintenance on the short end hood of the #2 traction motor on Locomotive NS 9058 on April 24, 2017. The tasks ordered included inspecting the condition of the traction motor lead, speed probes and cables, commutator, brush holders and freeing up or renewing the traction motor brushes. Undisputed record evidence establishes that he signed off on this work indicating it had been completed at 12:48 p.m. on April 24. On April 25 the unit was inspected and the #2 traction motor was found to be severely flashed over and the commutator and brush holders damaged. All such issues had been comprehended by the six-month maintenance inspection Claimant represented he had completed the previous day.

The Organization takes the position that the dismissal penalty violated Rule 29 - Discipline. Specifically, it argues that Claimant was subjected to disparate treatment since, unlike Electrician Sinclair who had worked with Claimant on April 24, he was not offered alternate START handling. Additionally, it takes exception to Carrier's introduction of photographs of equipment received in evidence at the formal investigation intended to portray conditions similar to those precipitating the charges against Claimant. Neither of those contentions have sufficient force to power through the undisputed facts of record. With respect to Electrician Sinclair, Carrier asserts without challenge that he had only been charged with failure to follow instructions, not falsification of maintenance records. With respect to the photographs issue, the Board discerns no prejudicial procedural or evidentiary issue sufficiently serious to warrant disregarding the facts established on this record.

Lastly, serious aggravating facts are presented in this instance. Claimant had been dismissed from service on March 25, 2014, for failure to provide proper protection on a move, falsification of forms and conduct unbecoming an employee in making false statements with respect to matters under investigation. That action was set aside by a previous decision of this Board in Award 143 of Public Law Board 5332. Reinstatement to service, however, was there accompanied by an explicit admonition that "any future corner cutting" could again result in dismissal. Having purposefully decided to ignore the

implications of that hint when given a chance to atone, it can hardly be said that dismissal in this instance was unreasonable.

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 3, 2019