NATIONAL MEDIATION BOARD PUBLIC LAW BOARD NO. 5332

Parties to Dispute:	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS	AWARD
-and-	Case No. 179
NORFOLK SOUTHERN RAILWAY COMPANY)	Claimant C. E. Slusser

STATEMENT OF CLAIM:

"Claim on behalf of Electrician C. F. Slusser 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 Slusser 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 Slusser, employed by Norfolk Southern as an Electrician at the Roanoke Locomotive Shop in Roanoke, VA, was dismissed from service on February 22, 2018. That action followed Carrier's review of evidence produced at a formal hearing held on January 24, 2018. Termination was based upon charges of unacceptable performance of duties and conduct unbecoming an employee, specifically focusing on offensive behavior involving Electrician T. Luck on January 3, 2018, and subsequently making false statements with respect to matters under investigation.

According to the hearing transcript of Claimant's formal investigation, while making his rounds on the night of January 2, 2018, Mechanical Supervisor Ligon observed

Claimant on the NS 8339 reviewing a Positive Train Control (PTC) modification sheet at approximately 12:00 AM. In response to Ligon's question about his progress, Claimant stated that he had not performed any work since he was unfamiliar with PTC modifications. Rigon instructed him to continue on, and upon checking back around 1:45 AM reported to his superior, Mr. Robbins, that Claimant had still made no progress. Robbings entered the cab and found Claimant still reviewing several mod sheets with neither any materials nor tooling out in preparation for any tasks after the lapse of more than 4 hours. The record indicates Claimant had been given the assignment in question on the previous day and that he had received all appropriate training required for completing the tasks assigned.

Carrier's second charge centers on incidents occurring on January 2, 2018. According to Charging Officer Robbins, on the night of January 3, 2018, Electrician Luck informed him of a verbal altercation he had had with Claimant the previous night. Mr. Luck prepared a written statement setting forth a detailed account of Claimant's behavior a day earlier, including Slusser's repeatedly shining a flashlight in his eyes and informing Luck he had bid onto his team "just to mess with me." Luck further recounts having been asked by supervision if Claimant could perform a specific task and replying, "maybe, if I can catch him between naps." According to Luck, the remark got back to Claimant, who then approached Luck between 5:00-5:30 AM and directed a stream of insults, including calling him a "rat bastard," making references to rat poison, and placing 3 stickers on his hard, including "Tell On Me," "No Rats," and "I Got Lucked." Luck states Claimant threatened him by stating, "if it caused him to get fired it was going to be my ass."

Lastly, in the course of Carrier's investigation into his interactions with Mr. Luck, Claimant professed to have no memory of calling him a rat in front of others, ever placing stickers on his hard hat or locker or ever receiving training on the installation of PTC equipment. Evidence offered by multiple witnesses confirmed Carrier's assertions on all relevant points, and Claimant both retracted several of his earlier denials at hearing and offered what Carrier concluded were implausible explanations such as describing his "No Rats" sticker as a reference to keeping the eating area clean.

Tara Arnett

Carrier Member

A careful reading of the record in its entirety forces the inescapable conclusion that the Organization has offered no persuasive evidence to justify vacating the discipline imposed. First, Claimant's extended unproductive time is not satisfactorily accounted for, and accordingly, Carrier's assertions on the point appear from this record to be entirely well-grounded. Secondly, no objective evidence is offered that might justify rejecting the judgment of Carrier's Hearing Officer that Claimant's statement and testimony regarding his interactions with Mr. Luck were less credible than the conflicting and disturbing evidence sponsored by Carrier officials and Claimant's co-workers, all affirming Carrier's allegations. For those reasons, the claim will be denied.

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The Claim is denied.

Tom Owens

Employee Member

Dated: January, 2020

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Chairman and Neutral Member