

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332**

Parties to Dispute:

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

-and-

NORFOLK SOUTHERN RAILWAY
COMPANY

AWARD

Case No. 158

Claimant M. A. Leon

STATEMENT OF CLAIM:

“Claim on behalf of Electrician M. A. Leon 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 Leon 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 February 11, 2016, Carrier summoned Claimant Leon to a formal investigation on February 23, 2016, to respond to the following charges:

Your responsibility, if any, on connection with tampering with the inward facing camera equipment on the RailView System Recorder on locomotive NS 9590 located on #2testline track, at approximately 4:00 PM on February 9, 2016, while assigned as an Electrician on the second shift (3:00 PM-11PM) at Shaffer’s Crossing Locomotive Shop, Roanoke, Virginia.

After review of the hearing record, by letter dated March 8, 2016, Carrier’s Senior General Foreman Jeff Watkins notified Claimant that he was being dismissed from service. The Organization submitted a timely claim taking exception to that action which, after

remaining unsettled after all required handling on the parties, is now properly before the Board for resolution.

Carrier's dismissal action is predicated upon its determination that Claimant improperly tampered with the inward facing camera equipment on the recorder system of a locomotive on which he was working. The factual basis underlying that determination is straightforward. Specifically on February 9, 2016, its Transportation Data Center discovered at approximately 4:44 p.m. that the field-of-view from the Inward Facing Camera on locomotive NS 9590 was partially obstructed. Locomotive Shop Manager J. Bilthuis was notified and in turn contacted Shop Manager J. Hutton, who promptly conducted an inspection of the locomotive in G Section of the Shop on Track #2. There he observed a piece of paper covering the inward facing camera.

Mr. Hutton testified at Claimant's formal hearing that he spoke with all employees who had been assigned to work on NS 9590 and solicited written statements from each with respect to any knowledge they might have regarding the irregularity. Claimant, who had been assigned to work the locomotive, initially stated that he did not notice anything unusual in the cab, but upon further questioning admitted that he had covered the camera with a piece of paper. Both his own testimony at his Formal Investigation and the written statement submitted by Electrician T. Patsell, also assigned to work to NS 9590, establish Claimant's responsibility:

Q (Spotswood): Okay, Mr. Leon, why did you cover the lens of the camera?

A (Claimant): It was just—it was a big distraction. I mean it was a distraction for everybody in the cab. That was—that was the main reason. It was very distracting.

According to Patsell's written statement, "I witnessed cab camera being covered at time 4:00 to 4:30 on 2/18/16." In testifying at the Formal Investigation, Patsell identified the person who covered the camera as the Claimant.

Operating Rule R – *Tampering and Unauthorized Devices* provides:

a) Unless properly authorized, employees are prohibited from restricting or interfering with the normal intended function of any device or equipment on locomotives, cars, or other railroad property except in case of emergency, in which case report must be made to the proper authority.

d) Safety device means equipment that is used either to assure that the locomotive Operator is alert, not physically incapacitated, aware of complying with the indications

of a signal system or other operational control system or to record data concerning the operation of the locomotive or the train it is powering. Any individual who willfully disables such a device is subject to civil penalty and to disqualification from performing safety-sensitive functions on a railroad.

In his own defense, Claimant asserted that he had no prior knowledge that covering the camera lens could lead to discipline, and offered a mix of motives for his actions. “I have heard rumors,” he stated, “that it’s supposed to record the crew when it’s in operation, but that’s a rumor. It’s hearsay, conjecture. I honestly do not know. I’ve never [been] given any formal knowledge.” Mr. Hutton testified, however, that on February 2016, one day prior to this incident, Carrier officials had discussed tampering with devices at the shop with all employees, including prohibitions on interfering with the functions of all devices. Taking that testimony in combination with claimant’s signed acknowledgment of his record of Carrier’s Operating Rules, Carrier’s Hearing Officer credited Hutton’s testimony over the Claimant’s insistence that he was unaware of the purpose of the camera. The rules governing the functioning of this Board require deference to that credibility determination.


Of equal concern to the Board, Claimant’s articulated reasons for his action are internally inconsistent and unpersuasive, suggesting that on one level he is struggling with where to take aim. After initially stating that he “did not want to be working with the camera on him,” he subsequently asserted that his “main” reason was that he found the camera a distraction before later announcing that he covered the inward facing camera to protect it from being damaged.

In an industry so intensely charged with safety concerns, purposeful tampering with safety devices represents an extremely serious rule violation. Additionally, Claimant’s Career Service Record affords little basis for questioning Carrier’s judgment with respect to quantum of discipline. It reflects that subsequent to his initial hiring on March 7, 2005, Claimant was issued two Letters of Reprimand for excessive absenteeism in late 2006 and early 2011. He was then discharged August 9, 2011, for making false statements regarding a matter under investigation. Pursuant to PLB 5332 Award 117, he was restored to service without back pay on September 24, 2102. On January 27, 2105 he was cited with another START (Minor) for wearing improper footwear. On November 10, 2015, he was then cited with a further START (Serious) for failure to follow instructions.

For the reasons stated above, and based upon a careful consideration of the record in its entirety, the Board must find that Carrier has established just cause for dismissal.

A W A R D

The Claim is denied in accordance with the Findings.


James E. Conway
Chairman and Neutral Member

Tom Owens
Employee Member

Christopher Decker
Carrier Member

Dated: November 21, 2017