

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332

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Parties to Dispute:)	
)	
INTERNATIONAL BROTHERHOOD OF)	<u>AWARD</u>
ELECTRICAL WORKERS)	
)	Case No. 169
-and-)	
)	Claimant J. Shelton
NORFOLK SOUTHERN RAILWAY)	
COMPANY)	
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STATEMENT OF CLAIM:

“Claim on behalf of Electrician Jacob Shelton 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 Shelton 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.

Following formal investigation conducted on March 3, 2017, Carrier notified Claimant Shelton on March 10, 2017, by Certified Mail that he was being dismissed from service. That determination cited seven (7) specific rule violations or performance issues, as more fully discussed below. Following the Organization’s timely claim submitted on Mr. Shelton’s behalf, denied at all levels of claim handling on the property, the matter was advanced to this Board for final determination.

The charges triggering termination alleged the following infractions: (i) insubordination on February 21, 2017, in “repeatedly refus[ing] to answer General Foreman Eric Bruce’s question” about what he was working on; (ii) failing to follow

instructions given at approximately 2:00 p.m. on February 21, 2017; (iii) being away from his assigned work area without proper authority on February 23, 2017; (iv) providing false statements to General Foreman Eric Bruce on February 23 relative to absence from work area; (v) improper performance of duty on February 23, 2017, in failing to work with another employee in order to complete assignment; (vi) insubordination on February 23, 2017, in refusal to immediately leave the property; (vii) providing false information to Company authorities on February 23, 2017, regarding collecting work materials.

Upon careful consideration of the record, for the reasons that follow, the Board concludes that while several of the Claimant's actions fell below acceptable standards, viewed in its entirety the record does not establish misconduct rising to the level of a dismissal offense.

Shortly out of his phase as Journeyman Electrician, Claimant's communications skills obviously fell short in the course of several of the exchanges in question. For example, with respect to the February 21 allegation of insubordination in failing to respond to Foreman Bruce's questions, Mr. Bruce's testimony at hearing clearly indicates that the Claimant both pointed and shorthanded his response to Bruce's questioning regarding how he would be progressing NS 3403. Passing without comment the language employed, the record establishes that Claimant replied to Bruce's request that he show Bruce exactly how he would be removing the seal tite from the cab signal components. A spicy response is no more insubordination than an option is an order.

Similarly, Carrier's second charge appears somewhat wide of the mark with the facts suggesting Claimant had clearly insufficient shift time remaining to accomplish the assignment in question.

Carrier's third charge, suggesting Claimant was away from his assigned work area for several brief periods, in light of the Charging Officer's own admission is vague and unpersuasive.

Charges four and five are enfeebled by the statements and testimony of Boilermaker Frink and Electrician Crouch, both indicating without challenge that conversations were had between Claimant relative to cooperating in the performance of the work in question.

With respect to the final charge asserting failure to leave the property promptly, while the record supports the contention that departure was not immediate, it does not establish either any unreasonable delay or inappropriate defiance of authority. The Board finds Carrier has refused to carry its burden of proving insubordination in this regard.

The record suggests the possibility of some ongoing electricity between Claimant and his supervision, explaining but hardly excusing at least some of the issues raised herein. In summary, however, while it supports discipline for several aspects of the events in dispute, it does not support dismissal. Accordingly, the discipline will be converted to a disciplinary suspension. Carrier is directed to restore Claimant to service without backpay or benefits at the earliest possible time.

A W A R D

The Claim is partially sustained in accordance with the Findings.

Tom Owens
Tom Owens
Employee Member

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

Christopher Carr
Christopher Carr
Carrier Member

Dated: December 14, 2018