

**PUBLIC LAW BOARD NO. 1837**

**Award No. 107**

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
and  
NORFOLK AND WESTERN RAILWAY COMPANY

Statement of Claim:

1. The twenty-two day suspension assessed Assistant Foreman A. J. Long for his alleged conduct unbecoming an employee concerning being insubordinate and failing to follow instructions was without just and sufficient cause and in violation of the Agreement (Carrier's File MW-FTW-96-21).
2. Claimant A. J. Long shall now be compensated for all wage loss suffered from April 16 to May 8, 1996.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

**AWARD**

After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claims should be disposed of as follows:

The record in this case reveals that the Claimant was properly found guilty of

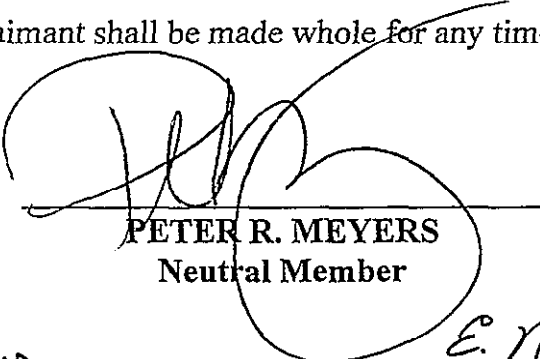
acting in an insubordinate manner and failing to follow instructions from his supervisor. The disrespect and insubordination he displayed on the date in question clearly constituted conduct unbecoming an employee.

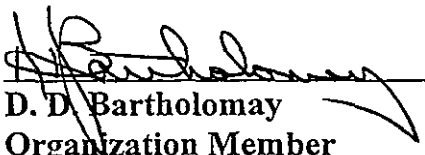
Once this Board has determined that there is sufficient evidence to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

This Claimant has been employed by the Carrier for over nineteen years. He has an excellent disciplinary record. Consequently, given the lengthy seniority and the good previous record, this Board finds that the Carrier only had just cause to issue the Claimant a five-day suspension. Hence, the 22-day suspension is reduced to a 5-day suspension and the Claimant shall be made whole for the difference.

**AWARD:**

Claim sustained in part. The Carrier had just cause to issue a five-day suspension to the Claimant. The Claimant shall be made whole for any time that he was off in excess of the five days.

  
PETER R. MEYERS  
Neutral Member

  
D. D. Bartholomay  
Organization Member

  
E. N. Jacobs, Jr.  
Carrier Member

Issued at Chicago, Illinois on June 29, 1998