

PUBLIC LAW BOARD NO. 6394

AWARD NO. 12

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
(CONSOLIDATED AND PENNSYLVANIA FEDERATIONS)

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of D. Zalewski for reinstatement with seniority and all other rights unimpaired and pay for all time lost as a result of his dismissal from service following a formal investigation on April 26, 2002, for insubordination and failure to follow instructions and being argumentative and belligerent, and threatening to claim a personal injury while assigned as a machine operator on TS-33 on April 4, 2002.

(Carrier File: MW-HARR-02-03-SG-067)

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 and has jurisdiction of the parties and subject matter.

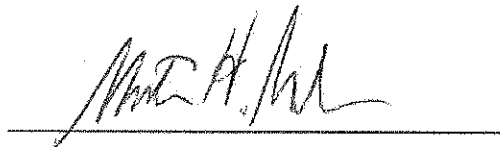
This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

Claim disposed of as follows:

Carrier proved the charges by substantial evidence. The record established that on the date in question, Claimant, without justification, refused an order to perform his job picking up spikes lying in the ballast, threatened to file an injury claim, and thereafter refused an order by the Track Supervisor to come down off his machine to discuss his refusal and acted belligerently. Although Claimant testified and denied or explained some of these actions, his testimony was not credited on the property and, as an appellate body, we defer to the credibility determinations made on the property.

However, based on Claimant's record during his thirteen years of service, the incidents of April 4, 2002, stand out as an aberration. In light of this, we find that the penalty of dismissal was excessive and that Claimant should have a last chance to demonstrate that he can be a productive, cooperative

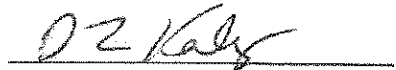
employee. Accordingly, we award that Claimant be reinstated to service, with seniority unimpaired, but without compensation for time held out of service.



M. H. Malin
Chairman and Neutral Member



P. K. Geller, Sr.
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on February 25, 2003