

NATIONAL MEDIATION BOARD  
Special Board of Adjustment No. 1048

JOHN C. FLETCHER, CHAIRMAN & NEUTRAL MEMBER  
R. A. LAU, ORGANIZATION MEMBER  
E. N. JACOBS, JR., CARRIER MEMBER

BROTHERHOOD OF MAINTENANCE OF  
WAY EMPLOYEES

and

NORFOLK WESTERN RAILWAY COMPANY

Award No. 44

Hearing Date - January 27, 1994  
Date of Decision - February 10, 1994

Statement of Claim:

Claim on behalf of M. W. McPherson requesting that he be reinstated to service and paid for time lost as a result of formal investigation held on April 26, 1993, in connection with his placing himself in an unsafe position after being warned. - [Carrier File: MW-ROAN-93-15]

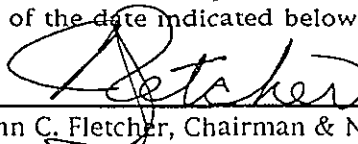
**FINDINGS:**

Special Board Adjustment No. 1048, upon the whole record and all of the evidence, finds and holds that the Employee(s) and Carrier(s) are employee and carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute(s) herein and that the parties to the dispute(s) were given due notice of the hearing thereon and did participate therein.

**AWARD**

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

At Claimant's investigation adequate evidence was introduced to establish that he placed himself in an unsafe working position after being warned about the condition. As a result he was injured. In the circumstances present discipline was warranted. However, discipline of dismissal is excessive. It will be modified to a suspension equal to the time out of service. Accordingly, Claimant shall be returned to service with seniority and other benefits in place, but without compensation for time lost. Carrier shall effect his return within thirty days of the date indicated below.

  
John C. Fletcher, Chairman & Neutral Member

  
R. A. Lau, Organization Member

  
E. N. Jacobs, Jr., Carrier Member

Issued at Mt. Prospect, Illinois, February 10, 1994

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