

SPECIAL BOARD OF ADJUSTMENT NO. 1049

Award NO. 107

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

Norfolk Southern Railway

Statement of Claim:

Claim on behalf of M. A. Leach for reinstatement with seniority, vacation and all other rights unimpaired and pay for all time lost as a result of his dismissal from service and in behalf of A. P. Davis for removal of a fifteen (15) day actual suspension following a formal investigation on October 29, 1998, for an altercation that occurred prior to beginning work at Flowery Branch, Georgia, on October 22, 1998.

(Carrier File MW-SELM-98-24-SG-490)

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 claim should be disposed of as follows:

Although there is no question that Claimant Leach was involved in a physical altercation at the work site with another employee, Claimant Davis, the facts point up that Davis had earlier provoked this incident. While Davis only received a fifteen-day suspension in this incident, Leach, however, was dismissed from service. In the Board's judgement, the penalty of discharge was too severe notwithstanding that Claimant Leach behaved in an unbecoming fashion and in violation of the Carrier's policy prohibiting fighting in the work place. Here, reinstatement without pay for time lost is the more appropriate remedy. Claimant Leach will be returned to service with full restoration of his benefits and unimpaired seniority rights. To the extent of the findings, his Claim will be partially sustained.

The record supports the charge against Claimant Davis and the assessed discipline he received. Accordingly, his Claim is denied.



C. P. Fischbach  
Chairman and Neutral Member



R. A. Lau  
Organization Member



D. L. Kerby  
Carrier Member

Issued at Chicago, IL on May 13, 1999