

SPECIAL BOARD OF ADJUSTMENT NO. 1049

Award NO. 109

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

Norfolk Southern Railway

STATEMENT OF CLAIM:

Claim on behalf of James Yorker for removal of a fifteen (15) day actual suspension and pay for all time lost following a formal investigation on May 17, 1999 in connection with his improper performance of duty and failure to follow instructions while assigned as a ballast regulator operator resulting in extensive damage to the ballast regulator, BR8602BXN.

(Carrier File MW-ATLA-99-13-LM-103)

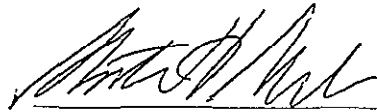
Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject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

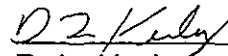
Claimant received a fifteen-day suspension for improper performance of duties. The record revealed that Claimant operated a ballast regulator without insuring that the plow blade was in a locked position. This resulted in extensive damage to the machine. Accordingly, we find that Carrier proved Claimant's guilt by substantial evidence. Furthermore, we cannot say that the penalty imposed was arbitrary, capricious or excessive. Therefore, the claim is denied.



M. H. Malin



R. A. Lau
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, IL on December 22, 1999