

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**Award NO. 113**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**Norfolk Southern Railway**

**STATEMENT OF CLAIM:**

Claim on behalf of T. E. Harmon for reinstatement with seniority, vacation and all other rights unimpaired and pay for all time lost as a result of his dismissal from service following a formal investigation on January 28, 1999, for conduct unbecoming an employee in marking off for medical reasons on November 16, 1998 and then engaging in outside employment inconsistent with his alleged lack of fitness for duty.

(Carrier File MW-SOMS-98-28-LM-582)

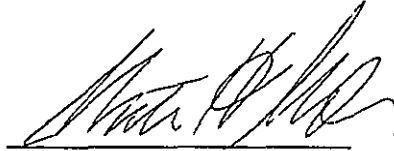
Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject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

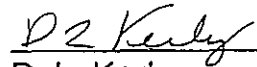
Claimant was dismissed for performing work inconsistent with his status of having marked off for medical reasons. Our review of the record convinces us that Carrier proved the charge by substantial evidence but, under all of the circumstances presented, we find that dismissal was an excessive penalty. Therefore, we order Carrier to reinstate Claimant to service with seniority and benefits unimpaired, but with no compensation for time out of service.



M. H. Malin



R. A. Lau  
Organization Member



D. L. Kerby  
Carrier Member

Issued at Chicago, IL on December 22, 1999