

SPECIAL BOARD OF ADJUSTMENT NO. 1049

Award NO. 117

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

Norfolk Southern Railway Company

Statement of Claim:

Claim on behalf of W. D. Brown requesting he be made whole by exonerating him, reinstating him, and paying him for all time lost, with seniority, vacation and all other rights unimpaired as a result of his dismissal in connection with his November 18, 1999 formal investigation for conduct unbecoming an employee in that on November 2, 1999, he was argumentative and belligerent toward Foreman P. E. Edwards while working on Gang TM 282.

(Carrier File MW-ATLA-99-38-LM-459)

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:

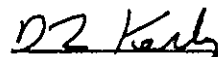
There is no question that Claimant Brown was argumentative toward his foreman at the work site. However, the facts point up that the Claimant's conduct concerning his reason for not operating the rail saw was influenced by his illness. After his encounter with the Foreman, Claimant was allowed to continue work performing other tasks. In the Board's judgement, the penalty of discharge was too severe notwithstanding Claimant's behavior which was unacceptable. Here, reinstatement without pay for lost time is the more appropriate remedy. Claimant Brown will be returned to service with restoration of his benefits and unimpaired seniority rights. The claim is partially sustained.



C. P. Fischbach
Chairman and Neutral Member



R. A. Lau
Organization Member



D. L. Kerby
Carrier Member