

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 129**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf of W. N. Barnwell for reinstatement, vacation and all other rights unimpaired and pay for all time lost as a result of his dismissal in connection with improper performance of duty as Flagging Foreman concerning his clearing track time authority between MP B-24 and MP B-29 with RWIC (Roadway Worker In Charge) J. T. Ivery, allowing Train #227 to strike equipment under his protection at MP B-27.4.

(Carrier File MW-GNVL-01-14-BB-350)

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**

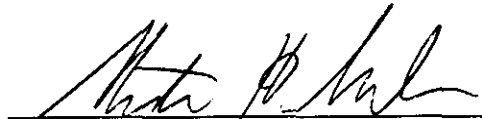
After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The record reflects that, on the date in question, Claimant, who was flagging for a contractor that was performing work boring holes through the back walls of certain bridges, reported that the track was clear without physically inspecting to ensure that the contractor had, in fact, cleared the track. As a result, the Roadway Worker in Charge gave up his track warrant and a train was allowed to proceed through the relevant segment of track. The train struck a Nolan Buggy which was on the track with the contractor's equipment.

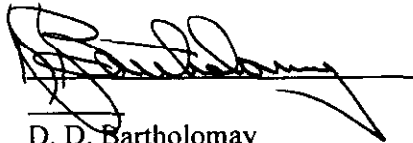
At the investigation, Claimant admitted his misfeasance. Consequently, we find that Carrier proved the charge by substantial evidence.

Claimant's misfeasance was very serious. Fortunately no one was injured, but such misfeasance can lead to serious or even fatal injuries. Nevertheless, we recognize that Claimant had approximately twenty-five years


to serious or even fatal injuries. Nevertheless, we recognize that Claimant had approximately twenty-five years of service, including eighteen as a foreman. Under the circumstances, we find that the penalty of dismissal was excessive. However, given the serious act of misfeasance, Claimant should not be allowed to perform flagging duties unless, and until, he qualified anew. Accordingly, we award that Carrier reinstate Claimant without compensation for time held out of service and without foreman or flagging foreman seniority.



M. H. Malin  
Chairman and Neutral Member



D. D. Bartholomay  
Organization Member



D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on October 11, 2002