

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 152

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf D. L. Wilson requesting that he be made whole and returned to service with seniority, vacation unimpaired as a result of his dismissal from service following a formal investigation held on October 20, 2005, for his responsibility in connection improper performance of duties in providing on-track protection.

(File MW-ATLA-05-11-LM-345)

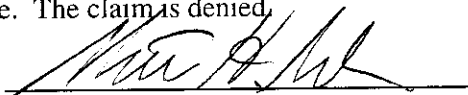
Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject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

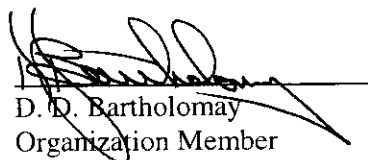
After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The record reflects that on October 19, 2005, Claimant responded inappropriately and with profanity to a request from a coworker to enlarge a hole he had dug to enable the coworker to use the circular saw to cut out a rail. On October 2005, Claimant walked out of the morning safety meeting and refused the Foreman's directive to return. Although Claimant denied this, these events were testified to by the coworker and the Foreman and corroborated by other members of the gang. As an appellate body that does not observe witnesses testify, we defer to credibility determinations made on the property. We find that Carrier proved the charge by substantial evidence. Given the serious nature of the charge, Claimant's short service and the absence of any mitigating factors, we cannot say that the penalty imposed was arbitrary, capricious or excessive. The claim is denied.




M. H. Malin

Chairman and Neutral Member



D. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on October 30, 2006