

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 155

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf Z. S. Huntley requesting that he be made whole and returned to service with pay for all time lost, with seniority and vacation unimpaired, as a result of his dismissal following a formal investigation held on December 6, 2005, for conduct unbecoming an employee and violation of Norfolk Southern Corporation Safety and General Conduct Rule GCR-1 in connection with his behavior toward his supervisor and a co-worker while lodged at a motel on September 25, 2005.

(Carrier File MW-GNVL-05-13B-BB-336)

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 September 27, 2005, Claimant approached his supervisor outside the supervisor's motel room as the supervisor was returning from dinner and asked his supervisor to cancel a pending investigation. The supervisor explained that he lacked authority to do so and went to his room. Shortly thereafter, Claimant banged loudly on the supervisor's door and when the supervisor opened the door, barged into the room, demanded that the investigation be stopped, behaved belligerently toward the supervisor and defied the supervisor's directive to leave the room. Eventually, the supervisor, who felt threatened by Claimant, called motel security. At first, Claimant defied the motel officials' direction to leave the room but eventually complied. Claimant then went to his room, opened the door so hard that it damaged the door stop, and continued behaving belligerently, making racially offensive remarks, driving the coworker with whom he was sharing the room from the room. Carrier clearly proved the charges by substantial evidence.

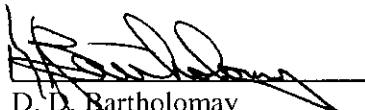
Claimant did not attend the hearing, purportedly because he was working another job in another city and could not afford to come. Carrier did not violate the Agreement by proceeding in absentia. Carrier postponed the hearing at Claimant's and the Organization's request twice. The Agreement does not give

Claimant a demand right to have the hearing scheduled solely at his convenience.

Claimant engaged in acts of very serious misconduct. At the time of the incidents, he had been in Carrier's service for less than one year. In view of his short service and the lack of any mitigating circumstances, 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 12/4/06
D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on October 30, 2006