

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 174**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf of J. L. Williams for exoneration with seniority and all other rights unimpaired and pay for all time lost as a result of his dismissal from service following a formal investigation on November 9, 2006, in connection with violation of Rules GR-3 and Gr-1220, resulting in a personal injury on August 30, 2006.

(Carrier File MW-CN-06-21-SG-393)

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.

**AWARD**

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

The record reflects that on August 30, 2006, Claimant was operating a Nipper Spiker when a bolt fell off a bracket on the machine. Claimant got off his machine, picked the bolt out of the ballast and crawled onto the floorboard of the machine. He reached inside to place the bolt in a hole that would hold the bracket in place until he caught up with the gang in an idle area where he intended to make further repairs. As he was doing so, his knee hit the travel pedal. The spiker's gun went up and Claimant was unable to move his hand out of the way. Claimant suffered a broken forearm and a crushed hand.

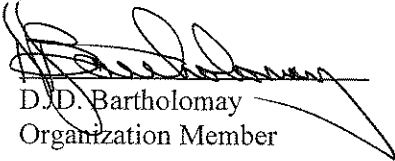
Claimant's injury could easily have been prevented had he followed proper lockout-tagout procedures. Claimant admitted that he was familiar with such procedures and that he had followed them many times in the past. Claimant's only explanation for not following them in this instance was that this was a small repair, he was in a hurry, did not want to stop production and did not think about it. Of course, such excuses cannot justify Claimant's failure to follow a basic and extremely important safety rule. Carrier clearly proved the charges by substantial evidence.

Claimant committed a very serious violation of extremely important safety rules which resulted in a severe personal injury. Without diminishing the seriousness of Claimant's offense, we note that apart from this incident there is no evidence that Claimant was anything but a good employee. Considering all


of the circumstances, we conclude that the penalty of dismissal was excessive and that Claimant should be reinstated to service with seniority unimpaired but without compensation for time out of service. Claimant is placed on notice that this lengthy disciplinary suspension is intended to underscore the seriousness of his offense.



M. H. Malin  
Chairman and Neutral Member



D.J.D. Bartholomay  
Organization Member



D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on January 28, 2008