

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 175**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf of C. E. Cunningham for reinstatement with seniority, vacation and all other rights unimpaired and pay for all time lost as a result of his dismissal from service following a formal investigation on January 10, 2007, concerning failure to protect his job assignment and his excessive absenteeism in that he was absent from his work assignment on August 9, 22, 28, 29, 30, 31, September 1, 20, 29, October 25, 30, 2006 and continuing.

(Carrier File MW-GNVL-06-24-LM-516)

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 Claimant was absent with permission on August 9, 20006. On August 22 he was again absent and his supervisor expressly instructed him to call in when he was going to be absent. Nevertheless, Claimant was absent the entire week of August 28 - September 1 without calling in. When he returned to work, the supervisor again reinforced the need to call in when Claimant was going to be absent. On September 20, Claimant was absent without calling in and on September 29, he was tardy without calling in. On October 25, he was absent without calling in for permission and was again told by his supervisor that there was no excuse for a failure to call in. Nevertheless, Claimant was absent on October 30 without calling in. Claimant did call in the night of October 30 and advised that he would be absent on October 31. The supervisor responded that as far as he was concerned, Claimant was done and told Claimant he could resign or face an investigation. Claimant did not resign, but he did not report to work on subsequent days, resulting in his being withheld from service and noticed for investigation on November 3.

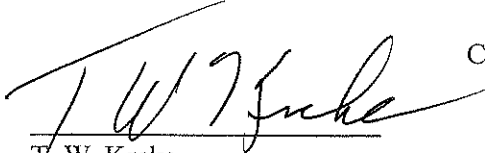
There is no question that Carrier proved the charge by substantial evidence. Indeed, the record allows no other conclusion than that Claimant repeatedly was a no call, no show, despite being counseled to call in if he was going to be absent. Claimant was a very short term employee, with just over one year of service. At the hearing, he displayed his indifference to his obligations as an employee. He testified that he was not familiar with Safety and General Conduct Rule GR-6 which prohibits absence without proper authority. When asked if he had a Rule Book, Claimant responded:

Somewhere. I don't know where it's at. He gave me one. Everybody got one. I don't know where it is. I ain't never paid no attention to it.

Carrier is simply not required to retain such an irresponsible and indifferent employee in its employ. The claim is denied.



M. H. Malin  
Chairman and Neutral Member



T. W. Kreke  
Organization Member



D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on February 5, 2008