

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 177

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of D. C. Frazier 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 18, 2007, in connection with his conduct unbecoming an employee in that he used abusive, unprofessional, and insulting comments directed at his Foreman on January 5, 2007.

(Carrier File MW-GNVL-07-01B-LM-025)

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 January 5, 2007, Claimant was working as Laborer/Truck Driver and driving a Carrier truck from Charlotte to Kannapolis, North Carolina. Seated next to Claimant was his Foreman and seated in the back seat were three Laborers. The Foreman testified that at two points in the drive, he questioned the route Claimant was taking and each time, Claimant responded with profanity. According to the Foreman, upon arrival at Kannapolis, he questioned the location where Claimant was parking the truck and Claimant responded with even more profanity. When the Foreman indicated that he was going to call higher level supervision, Claimant persisted in cursing the Foreman. The three Laborers corroborated the Foreman's testimony with respect to the cursing after arrival at Kannapolis.

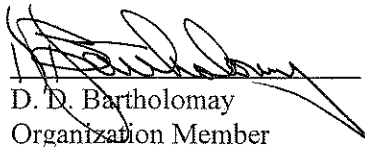
Claimant admitted cursing at Kannapolis but maintained that he was provoked by the Foreman constantly cursing at him. However, all other witnesses, including Claimant's three coworkers who were riding in the back seat, testified that the supervisor never cursed at Claimant. We conclude that Carrier proved the charges by substantial evidence.

The record reflects, however, that Claimant had worked for this Foreman since the prior June and had never cursed at him like he did on January 5, 2007. The record further reflects no complaints of conduct unbecoming an employee against Claimant when he worked for his current Foreman's predecessor. Claimant admitted that he lost control on the date in question and apologized at the hearing. It thus appears that, although Claimant committed a very serious violation on January 5, 2007, his conduct on that day was aberrational rather than typical. Under these circumstances, we conclude that the penalty of dismissal was excessive. Claimant shall 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. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on January 28, 2008