

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 204

Parties to Dispute:

BROTHERHOOD OF MAINTENCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim of the System Committee of the Brotherhood that:

- 1) The dismissal of Mr. G. Miller for conduct unbecoming an employee and improper performance of duties as foreman, in connection with allegation that the Claimant: (1) remained in the motel, under pay, while the gang was working picking up material on or about November 19, 2008; and (2) absented himself from work to stay in the motel on or about October 29, 2008 was capricious, unjust, excessive, and in violation of the Agreement.
- 2) As a consequence for the unjust dismissal describe in Part 1 above, Mr. Miller shall be made whole and restored to the service of the Carrier, with pay for all lost time, seniority, and vacation unimpaired.

(Carrier File: MW-GNVL-09-01-BB-068)

Upon the whole record and all the evidence, after hearing, the Board finds 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 precedent in any other case.

AWARD

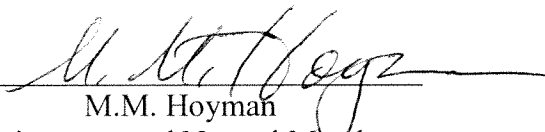
After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The Claimant is seeking reinstatement after being dismissed for a variety of personal conduct allegations following an investigation by the Carrier. The Carrier states that the Claimant remained in his motel room while his work unit was on the job on at least two occasions on October 29 and November 19. The Organization objects to the charges as being too general in nature. However, there was insufficient evidence in the record to refute the charges. It is the position of the Board that the evidence suggests the

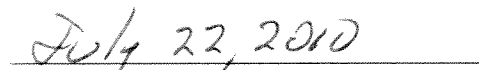
alleged misconduct did occur. Remaining in a motel room while the unit is at work is not appropriate conduct for any employee, particularly those in a position of foremen who have safety related responsibilities.

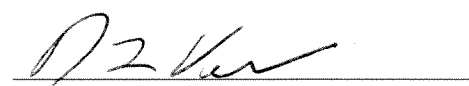
Although the Carrier had cause to discipline the Claimant, the penalty of dismissal was excessive given the level of misconduct. As such, the Claimant should be reinstated but without full seniority. The Board concurs with the Carrier that the conduct is unbecoming of an employee with foreman status, so the Claimant upon reinstatement shall forfeit his foreman seniority. Nothing in this award should be construed as the Claimant being unable to achieve foreman status in the future if he meets the requirements. The Claimant shall not receive any back pay from the date of severance.

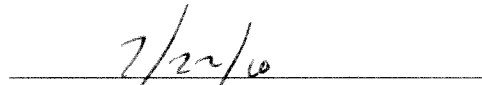
The claim is sustained in accordance with the findings. The Carrier is directed to make this effective within 30 days following the date the parties affix their signatures thereto.


M.M. Hoymah
Chairperson and Neutral Member


T. Kreke
Employee Member


Date Signed


D.L. Kerby
Carrier Member


Date Signed

Issued at Chicago, Illinois on June 19, 2010.