

SPECIAL BOARD OF ADJUSTMENT

NO. 1063

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-VS-

NORFOLK SOUTHERN CORP.
(N&W RAILWAY COMPANY)

DOCKET NO. OE - OKW - 97-101

CASE NO. 211

CLAIMANT: S.L. Moss

FOR THE CARRIER: K.J. O'Brien, Director, Labor Relations

FOR THE ORGANIZATION: P.T. Sorrow, Vice President, BLE

NEUTRAL: Dr. James R. McDonnell

STATEMENT OF CLAIMS

Claim of Lake Division, Detroit District, Engineer S.L. Moss for reinstatement to service and pay for all lost time after dismissal for conduct unbecoming an employee for transporting, displaying, and distributing a photograph with obscene, sexually explicit and demeaning remarks over the likeness of Detroit Terminal Superintendent Stigall and his wife, while working as engineer on Train 195L521 on January 24, 1997.

FINDINGS

Upon the whole record and all evidence after the November 4, 1997 hearing in the Carrier's office, Norfolk, Virginia, and study of post-hearing submissions received on or before November 4, 1997, the Board finds that the parties herein are carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and the subject matter.

DECISION

The Carrier has carried its required burden of proof in the instant claim. They have established by a preponderance of evidence that the Claimant is guilty of the Charges.

Eye witnesses testified that they saw the Claimant remove the photograph from the bulletin board in Toledo, Ohio, have copies of same reproduced and then take them to Detroit, Michigan where he displayed the same photographs in multiple locations in the Blue Room.

The Organization raised a number of procedural matters including timeliness of the filing of the Charges. The Board has reviewed each of these objections and finds them immaterial. They must be set aside.

In particular, the Organization claims disparate treatment from those other employees involved in the matter. No such claim can be made because the other employees disciplined admitted their guilt and accepted their penalties. The Claimant insisted that he was innocent in spite of all the conclusive evidence against him.


Although the Board recognizes the seriousness of the Claimant's actions and the obvious pain it has caused the Superintendent and his wife, we feel that termination from service may be more than this claim requires.

For these reasons, the Board makes the following Award.

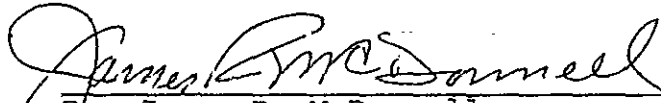
AWARD

The Claimant shall be returned to service without back pay or benefits, save his seniority date.

The Claimant shall be returned to service within 30 days of the date below.


K.J. O'Brien, Director, Labor Relations


P.T. Sorrow, Vice President, BLE


Dr. James R. McDonnell
Neutral

December 15, 1997
Date

jdm