

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 210**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim: "Claim of the System Committee of the Brotherhood that

1. The dismissal of Pile Driver Operator M. Martin for failure to protect his assignment when he vacated his position without permission of his foreman and failure to follow his foreman's instructions to install a cross buck sign on December 18, 2009 is based on unproven charges, unjust, unwarranted, excessive and in violation of the Agreement (Carrier's File MW-GNVL-09-37-BB-582).
2. As a consequence of the violation referred to in Part I above, Claimant Martin shall be made whole, exonerated of all charges and restored to service of the Carrier and paid for all time lost with seniority and vacation unimpaired."

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 had five years of service with the Carrier at the time of the precipitating event. He was assigned temporarily to a headquarters in Asheville, N.C. At the time of the incident on December 17, 2009, the Claimant had no active disciplines in his record. On the evening of December 17, 2009, the Claimant's supervisor V. Harding received a call regarding a problem with a cross buck in Commerce, Ga. The next morning the supervisor and the Claimant discussed the situation of the cross buck and the necessary repairs it required. The supervisor told the Claimant to travel down to Georgia in order to fix the cross buck situation quickly. After


the supervisor told the Claimant this, the Claimant stated to him that he was not going to be able to travel to Georgia to do the work. Supervisor Harding then called his own supervisor and while on the phone with him, the Claimant left, saying he was going home.


On December 22, 2009, when the Claimant returned to work, the B & B Supervisor R. Atcheson Jr. handed him a notice to appear at a formal investigation on January 14, 2010. After that investigation was completed, the Claimant received notice that he was charged with failure to protect his assignment and failure to follow the supervisor's instructions to install a cross buck in Georgia on December 18, 2009 and that there was evidence adduced during the investigation that both of these charges were accurate. As such, he was informed he was being dismissed from Norfolk Southern.

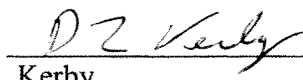
There is no dispute that Claimant did not protect his assignment and did not follow instructions of supervisor. The Claimant also admits that he could have handled the situation in a different way, communicating more clearly to the supervisor why he was unable to do an out of town job that would not bring him back that night. The Organization points out that there were mitigating circumstances. The court has ordered that if Claimant wants to retain custody of his two young daughters, he needs to be back home each night. The record indicates that the supervisor and Claimant knew each other well and that the supervisor was aware of the custody situation.

What the Claimant did was clearly wrong, but the Board finds that the penalty of dismissal is too severe, given the mitigating circumstances of a custody arrangement and the need to care for his daughters. Although the Board notes that the Claimant could have handled the situation differently, he nonetheless does not deserve to be dismissed, given his clean discipline record.

The claim is sustained in part. The Claimant is to be reinstated with the Carrier, but without back pay.

  
M.M. Hoyman  
Chairperson and Neutral Member

  
T. Kreke  
Employee Member

  
D.L. Kerby  
Carrier Member

Award Date: June 30, 2011