

SPECIAL BOARD OF ADJUSTMENT NO. 1048  
AWARD NO. 105

RECEIVED

OCT 11 2001

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

OFFICE OF VICE PRES.  
SOUTHEASTERN REGION

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of R. B. Beebe 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 February 7, 2001, for conduct unbecoming an employee when he made threatening remarks to Foreman Burras on January 22, 2001.

(Carrier File MW-DEAR-01-03-BB-012)

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.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.


AWARD

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

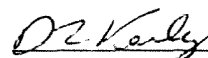
Carrier proved by substantial evidence that, on January 22, 2001, Claimant made threatening remarks to a B & B Foreman. Such misconduct is extremely serious. However, considering all of the circumstances, including Claimant's length of service, which dates from 1974, we find that the penalty of discharge is excessive. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time held out of service. Claimant's reinstatement shall be conditioned on his passing any reasonable medical exam that Carrier may require, including a psychological evaluation.



M. H. Malin  
Chairman and Neutral Member



R. A. Lau  
Organization Member



D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on September 19, 2001