

SPECIAL BOARD OF ADJUSTMENT 1048

Award No. 124
Case No. 124

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Norfolk Southern Railway Company

STATEMENT OF CLAIM:

1. The dismissal of Hoisting Engineer Gary Reichert for his alleged insubordinate conduct towards a supervisor on January 30, 2002 was without just and sufficient cause and an abuse of discretion (Carrier's File MW-FTW-02-02-LM-011).
2. Hoisting Engineer Gary Reichert shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

This Board, upon the whole record and all of the evidence, after hearing, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended;; and
2. That the Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction over the parties and the subject matter involved in this dispute.
3. This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

OPINION OF THE BOARD:

The present dispute arose as a result of the Carrier's determination that the Claimant, whose employment began on May 6, 1976, was guilty of insubordinate conduct toward Track Supervisor Bob Draper on January 30, 2002 during a verbal exchange about an air brake test on a crane to be operated by the Claimant in Knox,

Indiana.

A careful review of the record indicates that the Carrier proved that the Claimant had engaged in improper conduct by failing to defer to the Track Supervisor's handling of the air brake test. In voicing such concerns, the Claimant exceeded the arguable bounds of so-called "shop talk" and thereby failed to exercise proper respect for the supervisory relationship that existed between the Claimant and the Track Supervisor. The Claimant's improper choice of language under the particular circumstances set forth in the record therefore furnished the Carrier with a right to discipline the Claimant.

The record, however, also substantiates that the Supervisor could have taken more effective steps to diffuse the situation. The Supervisor failed to do so and thereby failed to seize the opportunity to stop the strained situation from escalating into such an unusual confrontation.

The record further indicates that the Claimant had accrued substantial seniority that involved a lengthy period of service. The record omits any evidence that the Claimant had exhibited this type of behavior in the past.

Under all of these special circumstances, the Claimant shall be reinstated with seniority without any back pay. Any other arguments raised by the parties are found to be immaterial to the proper resolution of the Claim.

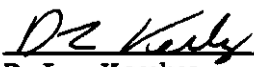
AWARD:

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

The Claim is sustained in accordance with the Opinion.
The Carrier shall make the Award effective on or before
60 days following the date of his Award.


Robert L. Douglas
Chairman and Neutral Member


D. D. Bartholomay
Organization Member
Dated: 10/28/02


D.L. Kerby
Carrier Member