

SPECIAL BOARD OF ADJUSTMENT NO. 1048

Award No. 34

Parties to Dispute:

Brotherhood of Maintenance of Way Employees

and

Norfolk and Western Railway Company

Statement of Claim:

Claim on behalf of Paul Abbott requesting reinstatement with all rights unimpaired and pay for all time lost in connection with his dismissal for fouling a live track without positive protection, improper performance of duty as a machine operator which resulted in destruction of a radar junction box and interruption of the hump operation, failure to promptly report the damage to the radar junction box, and failure to follow the instructions of the foreman.

[Carrier File MW-ROAN-92-02-LM-005]

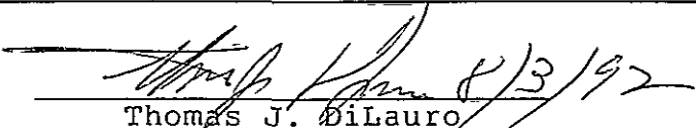
Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

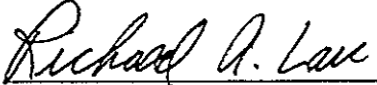
This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

AWARD

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

THE CARRIER HAS MET THE BURDEN OF PROOF IN THIS CASE, NAMELY,
THE CLAIMANT'S YEARS OF SERVICE MITIGATES IN HIS FAVOR.
CLAIMANT IS TO BE RESTORED TO SERVICE ON OCT. 21, 1992
AS A LABORER ONLY, WITHOUT PAY FOR TIME LOST


Thomas J. DiLauro


Richard A. Lau
Organization Member


E. F. Miller Jr.
Carrier Member

Issued at Philadelphia, Pennsylvania on August 3, 1992