

**SPECIAL BOARD OF ADJUSTMENT NO. 1048**

**Award NO. 96**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**Norfolk Southern Railway**

**STATEMENT OF CLAIM:**

Claim on behalf of D. S. Simonds 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 April 28, 1999, for making threatening remarks and making false and conflicting statements in connection with an alleged on-duty injury.

(Carrier File MW-ROAN-99-3-LM-7)

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**

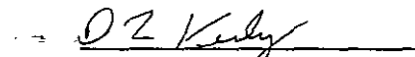
After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The record reveals that Carrier proved that Claimant made threatening remarks toward Carrier on January 13, 1999, and that he made false and conflicting statements in an on-duty injury report filed two days later.

The record further reveals that the offense was aggravated. Claimant had been angry over not being assigned to a welder's position. Claimant threatened to make the Carrier pay even if it took twenty years. Two days later, Claimant filed an injury report, alleging that he had been injured on duty on the same day that he made the threats. Thus, it appears that Claimant not only acted dishonestly, but also acted out of malice. Considering all of the surrounding circumstances, we cannot say that the penalty of dismissal was arbitrary, capricious or excessive. Accordingly, the claim is denied.

  
M. H. Malin

  
R. A. Lau  
Organization Member

  
D. L. Kerby  
Carrier Member

Issued at Chicago, IL on December 21, 1999