

SPECIAL BOARD OF ADJUSTMENT NO. 1049

Award NO. 108

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

Norfolk Southern Railway

STATEMENT OF CLAIM:

Claim on behalf of L. B. Bellamy, requesting that he be made whole with pay for all time lost with seniority, vacation, and all other rights unimpaired by exonerating him of the ninety (90) day actual suspension which resulted from the formal investigation held on March 18, 1999, for his responsibility in connection with his improper performance of and inattention to duties as a laborer, in that on January 13, 1999, at milepost NO-30.6, Barrett, Mississippi, while working on Gang R-1B, Claimant refused to give up a five-gallon bucket to prevent a hydraulic oil spill to the ground.

(Carrier File MW-ROAN-99-02-SG-003)

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.

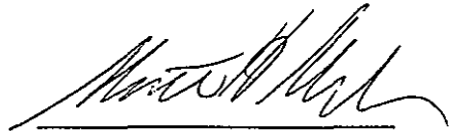
AWARD

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

Claimant initially was dismissed for improper performance of and inattention to his duties. Carrier subsequently reduced Claimant's dismissal to a 90-day suspension.

The record reveals that on January 13, 1999, Claimant was sitting on an overturned five-gallon bucket. A machine operator and a repairman needed the bucket for draining hydraulic oil from a pettibone swingmaster machine. Claimant gave them the bucket with great reluctance. Claimant then took another empty bucket and sat on it. When the machine operator and repairmen requested that bucket to catch the remaining oil, Claimant used profanity and refused to give it up. Accordingly, we conclude that Carrier proved Claimant's guilty by substantial evidence.

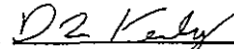
However, considering all of the surrounding circumstances, we find that a 90-day suspension is excessive. We will reduce the suspension to sixty days. Carrier is ordered to compensate Claimant for time lost, except for the first sixty days of the suspension



M. H. Malin



R. A. Lau
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, IL on December 21, 1999