

SPECIAL BOARD OF ADJUSTMENT NO. 1049

Award NO. 112

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

Norfolk Southern Railway

STATEMENT OF CLAIM:

Claim on behalf of R. W. McCotter for removal of thirty day actual suspension and payment for time lost as a result of a formal investigation held on August 3, 1999, in connection with improper performance of duties on July 26, 1999 by fouling the main track, in the vicinity of Vaucluse, South Carolina, in contradiction of Track Warrants Nos. 870 and 871.

(Carrier File MW-GNVL-99-9-LM-254)

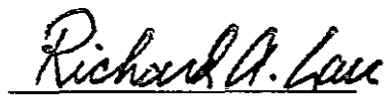
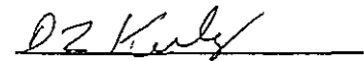
Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject 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, on July 26, 1999, Claimant obtained track warrants which granted him permission to occupy the main track after southbound trains NS6511 and NS 6609 had passed his location and after northbound train NS 9024 has passed the Warrenville siding. The record further reveals that Claimant occupied the track before NS6609 had passed. The record thus contains substantial evidence of Claimant's guilt of improper performance of his duties. Considering all of the circumstances, we cannot say that the thirty-day suspension imposed on Claimant 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 22, 1999