

SPECIAL BOARD OF ADJUSTMENT NO. 1049

Award NO. 115

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

Norfolk Southern Railway Company

Statement of Claim:

Claim on behalf of G. A. Smith requesting reinstatement with all rights and privileges and pay for time lost, as a result of his dismissal in connection with failure to protect his regular job assignment and vacating his job assignment without permission of supervisor on September 1 and 2, 1999; driving a company vehicle home without permission and insubordination when he drove a company vehicle home against supervisor's instructions; and driving a company vehicle without a valid driver's license.

(Carrier File MW-GNVL-99-15-LM-390)

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 met its burden of proof. However, the assessment of discharge is mitigated in this case by the fact that Claimant was a career employee of 29 years service with a relatively good work record. He only had one suspension in 1982 prior to this incident resulting in his dismissal. His discharge will be reduced to a suspension without pay for time lost, but with restoration of his benefits and unimpaired seniority rights. The claim is partially sustained.



C. P. Fischbach
Chairman and Neutral Member



R. A. Lau
Organization Member



D. L. Kerby
Carrier Member

Issued at Norfolk, VA on September 8, 2000