

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 120

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of G. R. Arrington requesting exoneration of all charges placed against him, reinstatement with seniority, vacation and all other rights unimpaired and pay for time lost, as a result of his dismissal from service following formal investigation held on August 14, 2000, for his responsibility in connection with improperly dismounting machine PD-81619, failure to maintain proper footing while dismounting machine PD-81619, and furnishing false statements in connection with this alleged injury on April 24, 2000.

(Carrier File MW-GNVL-00-05-LM-113)

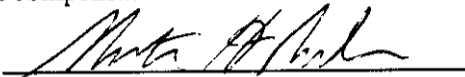
Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject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

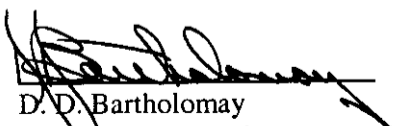
AWARD

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

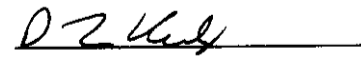
Carrier proved by substantial evidence that, on April 24, 2000, Claimant was negligent in dismounting machine PD-81619 and that he made false and conflicting statements as to how the accident occurred. Such misconduct is extremely serious. However, considering all of the circumstances, including Claimant's length of service, which dates from 1974 and the absence of any evidence of any prior discipline, we find that the penalty of discharge is excessive. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time held out of service.



M. H. Malin
Chairman and Neutral Member



D. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on January 28, 2002