

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 121

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of C. J. Grobusky requesting difference in pay for all time lost at the foreman's rate and removal of disqualification as a foreman assessed following a formal investigation held on October 5, 2000, in connection with his violation of Standard Procedure 270, Item 5.03, on September 18, 2000, and violation of Norfolk Southern Environmental Protection Policy on September 19, 2000.

(Carrier File: MW-GNVL-00-15-LM-389)

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.

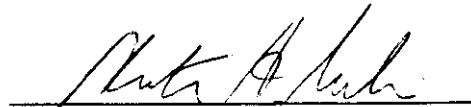
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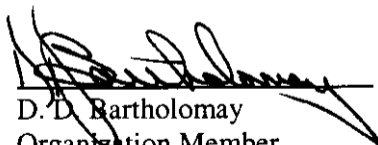
After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

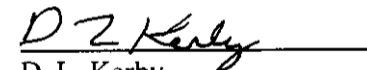
Carrier proved by substantial evidence that Claimant failed to notify the Chief Dispatcher that the track on which the equipment was tied up was taken out of service and that Claimant threw empty hydraulic fluid pails over the bank in as protected wetland area. Furthermore, Claimant's violations were aggravated. Claimant's sole reason for not notifying the Chief Dispatcher was that he got tired of receiving busy signals. Claimant threw the pails over the bank knowing that he was acting in violation of Carrier's Environmental Protection Policy and Claimant allowed the pails to remain where he threw them for a week. Under the circumstances, we cannot say that Carrier acted arbitrarily, capriciously or excessively in disqualifying Claimant as a foreman.

Claim denied.

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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