

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 122**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf of L. James requesting that he be made whole and returned to service with pay for all time lost with seniority, vacation unimpaired as a result of his dismissal from service following formal investigation held on November 13, 2000, for his responsibility in connection with improper performance of duties as a track repairman and failure to comply with Norfolk Southern Operating Rules GR-3, GR-27, M, 800, and 814, in that on November 1, 2000, the machine he was operating, RCM29, was involved in a collision with company vehicles 297655 and 298678.

(Carrier File MW-ATLA-00-27-LM-453)

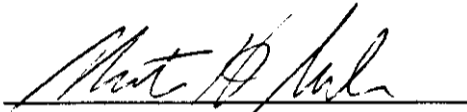
Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject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

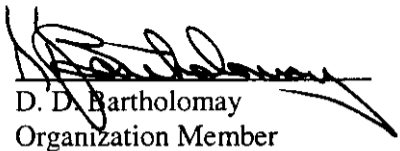
**AWARD**

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, Claimant's responsibility for failing to stop the rail changer prior to colliding with the other vehicles. However, considering all of the peculiar facts and circumstances, including Claimant's 27 years of service and the fact that the incident marked the first time in four years Claimant had operated this piece of equipment, we find the penalty of dismissal was excessive and order Carrier to reinstate Claimant 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