

RECEIVED

OCT 5 2001

OFFICE OF VICE PRES.
SOUTHEASTERN REGION

**SPECIAL BOARD OF ADJUSTMENT NO. 1049
AWARD NO. 123**

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of D. L. Rainey requesting exoneration of all charges, reinstatement to Carrier's service, with pay for all time lost, and with seniority, vacation and all other rights unimpaired, as a result of his dismissal from service following formal investigation held on December 7, 2000, for his responsibility in connection with his refusal to drive the Gang Truck at English, Indiana, on November 20, 2000.

(Carrier File MW-SOMR-00-10-LM-484)

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 Claimant failed to comply with instructions when he refused to drive the truck. However, considering all of the relevant facts and circumstances, including the potential for confusion that existed and Claimant's length of service which dates from August 20, 1974, we find that Claimant should be reinstated to service with seniority unimpaired, but without compensation for time out of service.



M. H. Malin
Chairman and Neutral Member



R. A. Lau
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on September 10, 2001