

SPECIAL BOARD OF ADJUSTMENT 1049

Award No. 130  
Case No. 130

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
Norfolk Southern Railway Company

STATEMENT OF CLAIM:

1. The dismissal of Machine Operators J. C. Gentry and S. H. Gentry for their alleged failure to protect their assignments on Wednesday, November 21, 2001 was without just and sufficient cause (System File MW-SOMR-01-10-SG-459).
2. Machine Operators J. C. Gentry and S. H. Gentry shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

This Board, upon the whole record and all of the evidence, after hearing, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended,; and
2. That the Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction over the parties and the subject matter involved in this dispute.
3. This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

OPINION OF THE BOARD:

The Claimants, who attended the hearing of the Board, worked as Machine Operators on Tie and Surfacing Gang 2 between Raleigh and Selma, North Carolina. The Claimants began their employment in 1995.

The present dispute involves the decision of the Claimants to leave their assignments on November 21, 2001, which was the

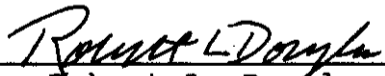
Wednesday before Thanksgiving Day. The Carrier asserts that the Claimants did not receive permission to do so and therefore failed to protect their assignments on Wednesday, November 21, 2001. The Organization maintains that the Claimants had received ambiguous information from the various supervisors and that the termination of the Claimants constituted an excessive and undue punishment.

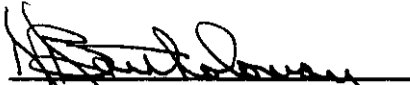
A careful review of the record indicates ongoing and continuing confusion by the Claimants over a period of days immediately prior to Wednesday, November 21, 2001 about whether they would be able to leave work sometime early on Wednesday. This confusion caused the Claimants mistakenly to rely on their expectation that they could leave work early on Wednesday, November 21, 2001. This mistaken belief in the context of the unusual work schedule for Tie and Surfacing Gang 2 immediately preceding the long Thanksgiving Day holiday weekend contributed to the Claimants leaving their work assignments without a complete appreciation of the seriousness of their action. Under these particularly special and unique circumstances, they shall be reinstated with seniority but without any back pay.

AWARD:

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

The Claim is sustained in accordance with the Opinion of the Board. The Carrier shall make the Award effective on or before 60 days following the date of this Award.

  
Robert L. Douglas  
Chairman and Neutral Member

  
D. D. Bartholomay  
Organization Member

  
D.L. Kerby  
Carrier Member

Dated: 10/28/02