

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 138

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of D. J. Ledbetter for reinstatement, with seniority, vacation and all other rights unimpaired and pay for all time lost as a result of his dismissal from service following a formal investigation on December 5, 2002, for conduct unbecoming an employee concerning engaging in offensive or inappropriate behavior towards co-workers by telling a joke that contained racial slurs on the T&S-8 gang bus on November 21, 2002.

(Carrier File MW-SOMR-02-15-SG 412)

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.

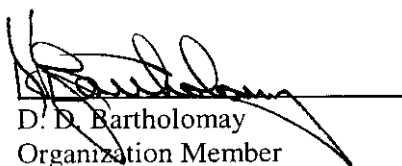
AWARD

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

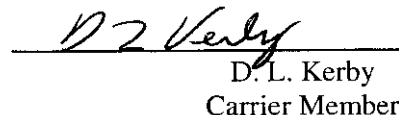
The record reflects that, on the date in question, Claimant told a joke to his coworkers on the T&S-8 gang bus and used a racial slur. At the investigation, Claimant admitted his misconduct. Consequently, we find that Carrier proved the charge by substantial evidence. Claimant's misconduct was very serious. However, the record also reflects that Claimant apologized to all persons involved when he realized that he had offended some. Furthermore, the record reflects that Claimant had approximately twenty years of service, and there is no evidence of prior discipline. Under the circumstances, we find that the penalty of dismissal was excessive. Accordingly, we award that Carrier reinstate Claimant 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 September 14, 2004