

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 150

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf L. E. Wright, for reinstatement to service with seniority, vacation and all other rights unimpaired and pay for time lost as a result of his dismissal from service following a formal investigation held on October 21, 2005, in connection with his failure to protect his assignment by being absent without permission.

(File MW-ATLA-05-10-LM-328)

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:

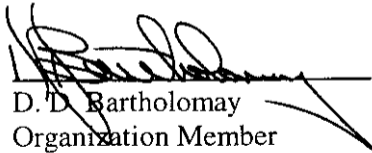
The record reflects that on September 20, 2005, Claimant left his assignment when he was arrested on a felony charge by the Clayton County Police Department. The record further reflects that Claimant did not report to work on September 21 because he was incarcerated. Another individual called Claimant's Foreman and reported that Claimant would be absent on September 21. There is evidence that after being released from jail, Claimant called in and received permission to be absent on September 22. Regardless of whether Claimant's absence on September 22 was authorized, it is clear that his early departure on September 20 and his absence on September 21 were not authorized. Arrest and incarceration do not justify failure to protect one's assignment. We conclude that Carrier proved the charge by substantial evidence.

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We find, however, considering all of the circumstances, that the penalty of dismissal was excessive. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time 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 October 30, 2006