

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 151**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf L. James requesting that he be made whole and returned to service with seniority, vacation unimpaired as a result of his dismissal from service following a formal investigation held on October 20, 2005, for his responsibility in connection improper performance of duties in providing on-track protection.

(File MW-ATLA-05-11-LM-345)

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**

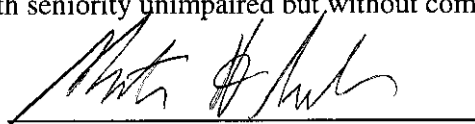
After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The record reflects that on October 6, 2005, Claimant allowed a CSX welding crew to work afoul of the track even though he did not have track authority and was not providing on track protection. Carrier proved the charge of improper performance of duties. However, Carrier failed to prove the charge of sleeping by substantial evidence. The track supervisor testified to observing Claimant sitting slouched in his truck but Claimant explained that he was attempting to radio the dispatcher to obtain track authority. Both the Track Supervisor and Claimant testified that the driver's side door to the truck was open at all times. Furthermore, the Track Supervisor did not see Claimant's eyes and could not testify as to whether Claimant's eyes were closed.

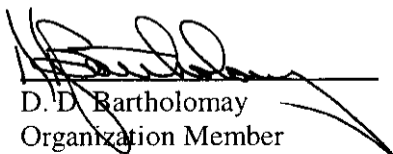
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Claimant's allowing the CSX employees to foul the track without protection was a serious act of misconduct. However, in light of the absence of substantial evidence that Claimant was sleeping and in light of Claimant's more than 31 years of service at the time of the investigation, we hold that 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