

SPECIAL BOARD OF ADJUSTMENT 1049

CASE NO. 176

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier's File: MW-GNVL-07-01A-LM-026)

Statement of Claim:

Claim on behalf of V. L. Robertson requesting difference in pay for all time lost at the foreman rate of pay and removal of disqualification as a Foreman and as an Assistant Foreman, assessed following a formal investigation held on January 18, 2007, in connection with an incident occurring on January 5, 2007, at Kannaplois, North Carolina, resulting in a verbal altercation with another employee and delays incurred by Gang TM-83 in respect to the gang's performance of scheduled duties.

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' presentation, the Board finds that the claim should be disposed of as follows:

BACKGROUND

V. L. Robertson, the Claimant herein, entered the Carrier's service on April 10, 1995 as a Laborer. On January 5, 2007, the Claimant was assigned as a Foreman on Gang TM-83 working around Kannapolis, North Carolina. The instant matter concerns the propriety of the Carrier's decision to disqualify the Claimant as a Foreman and Assistant Foreman as a result of conduct described below.

By letter dated January 10, 2007, the Claimant was notified to attend a formal investigation on January 23, 2007 for engaging in a verbal altercation with another employee and for delays incurred by Gang TM-83 in respect to the Gang's performance of scheduled duties. Following the formal investigation, rescheduled for January 18, 2007, the Hearing Officer determined that the Claimant was guilty of the charges and assessed the discipline of disqualification as a Foreman and as an Assistant Foreman.

Following our review of the record, we find that the Carrier met its burden of proof by demonstrating that the Claimant did not properly execute the duties of his assigned position of Foreman, a position responsible for the performance of his Gang in that:

- The Claimant did not properly brief the Gang as to what route they were to take to enter the work site;
- Following the start of the work shift, the Claimant required the Truck Driver to stop at a restaurant in order that he could get breakfast while in route to the work site, and
- While traveling to the work site, the Claimant ridiculed the Truck Driver which resulted in a verbal altercation that required the Track Supervisor to report to the work site in order to end the altercation.

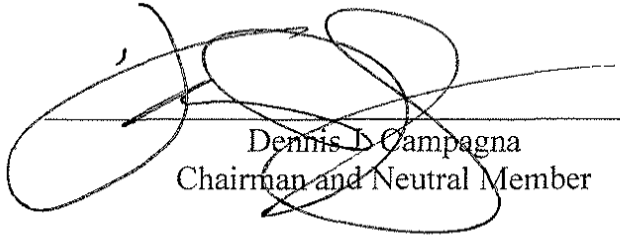
The record shows that the Assistant Track Supervisor and three co-workers confirmed the Claimant's inappropriate conduct.

Whereas the Carrier has proven the charges at issue, there remains a question as to the appropriate penalty. Given the unique circumstances of this case, and without setting a precedent for future cases which must stand on their own facts, the Board finds that a penalty of "time served" since the Claimant's disqualification from the ranks of A-1FF, A-2FF and A-2AF on February 2, 2007 is sufficiently severe so as to impress upon the Claimant that his improper conduct will not be tolerated. Upon review of the record, the Board is satisfied that the Claimant has learned his lesson and that the acts giving rise to the instant charge will not be repeated. Accordingly, the Claimant's seniority as Foreman and Assistant Foreman shall be reinstated on the effective date of this Award.

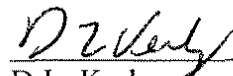
Finally, given the Claimant's restoration of seniority as noted above, the Board finds that the Claimant is prospectively eligible to bid on a Foreman and/or Assistant Foreman position, but that he may not displace anyone with less seniority that he possesses.

CONCLUSION

The Claim is sustained consistent with the findings and conclusions noted above.


Dennis D. Campagna
Chairman and Neutral Member


T. Kreke
Organization Member *June 27, 2008*


D.L. Kerby
Carrier Member

Dated: May 31, 2008