

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 190**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf of B. R. Cody appealing his 15-day suspension assessed following a formal investigation held on July 19, 2007, in connection with his failure to follow the instructions of his supervisor, issued prior to the end of the work day on May 14, 2007, in that Claimant left the job site at the end of the regular work shift instead of remaining to work overtime with the gauge spiker machines.

(Carrier File MW-CN-07-12- SG-115)

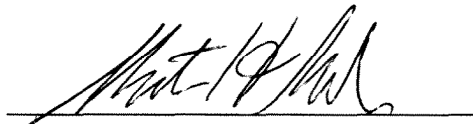
Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

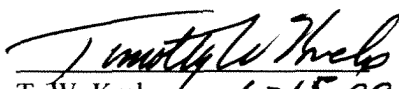
**AWARD**


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

The record reflects that on May 14, 2007, Claimant's supervisor instructed him to straighten tie plates ahead of the spikers and to feed spikes for the operator of the lead gauge spiker. The supervisor also instructed the gauge spikers and walking spikers to work overtime while releasing the other members of the gang at the end of the regular shift. Despite the instruction to work overtime, Claimant left the job site. Claimant's explanation that he left because he heard the foreman give a general instruction to members of the gang to board the gang bus and therefore believed he was free to go simply makes no sense. We conclude that Carrier proved the charge by substantial evidence.

The penalty of a fifteen day suspension was not arbitrary, capricious or excessive. Accordingly, the claim is denied.

  
M. H. Malin  
Chairman and Neutral Member

  
T. W. Kreke  
Organization Member

  
D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on May 30, 2009