

**SPECIAL BOARD OF ADJUSTMENT NO. 1049**

**AWARD NO. 191**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf of J. R. Lowery, III, requesting that he be made whole and returned to service with pay for all time lost with seniority, vacation unimpaired as a result of his dismissal from service following a formal investigation held on February 12, 2009, in connection with violation of Norfolk Southern Safety and General Conduct Rule GR-26 concerning sleeping on duty while assigned as a Machine Operator on the Tie Inserter on August 7, 2008.

(Carrier File MW-CN-08-22-SG-454)

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 is clear that on August 7, 2008, at the beginning of the shift, while the gang was in a siding waiting to move out, Claimant was found asleep with his machine running. Claimant attributed the offense to alcohol abuse. After being removed from service, Claimant, at his own initiative, entered Carrier's Drug and Alcohol Rehabilitation Services program and successfully completed the program.

We emphasize the seriousness of Claimant's offense. Sleeping on duty, particularly while at the controls of a running machine, is generally a dismissible offense. Furthermore, there is no rule that enrollment in a substance abuse program will automatically mitigate against discharge.

In the instant case, however, considering all of its peculiar facts and circumstances, particularly Claimant's having enrolled in and completed the DARS program on his own initiative, we find the penalty of dismissal to be excessive. Claimant shall be reinstated to service but without compensation for time held out of service and he shall forfeit his Machine Operator seniority.

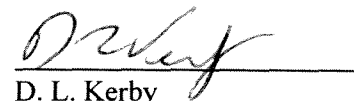


M. H. Malin  
Chairman and Neutral Member



T. W. Kreke  
Organization Member

OCT. 5, 2009



D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on September 24, 2009