

PUBLIC LAW BOARD NO. 1837

Award No. 104

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NORFOLK AND WESTERN RAILWAY COMPANY**

Statement of Claim:

1. The dismissal of Ballast Regulator Operator C. K. Collins for alleged conduct unbecoming an employee in that on January 4, 1996, while operating a Company vehicle he stopped and consumed an alcoholic beverage and alleged misappropriation of Company material was without just and sufficient cause, based on unproven charges and in violation of the Agreement (Carrier's File MW-FTW-96-01).
2. Claimant C. K. Collins shall now be reinstated to service with seniority, vacation and all other rights unimpaired and compensated for all wage loss suffered from January 5, 1996 and continuing until he is reinstated.

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

This Board has reviewed the procedural argument raised by the Organization and we find it to be without merit.

With respect to the substantive claim, this Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of consuming alcohol while en route from work with a Carrier vehicle and misappropriating Carrier material. There is sufficient circumstantial evidence in the record that the Claimant misappropriated the fuel when he left work on several occasions with a full fuel tank, and returned with an empty one. The vehicle was within his control the entire time, and therefore, he was responsible for the disappearance of the fuel. In addition, there is sufficient evidence that on January 4, 1996, the Claimant stopped in a tavern on the way home while driving the Carrier vehicle and consumed an alcoholic beverage. He then started to drive from the tavern after having drunk the beverage and he was removed from service by the Carrier police.

Once this Board has determined that there is sufficient evidence in the record to

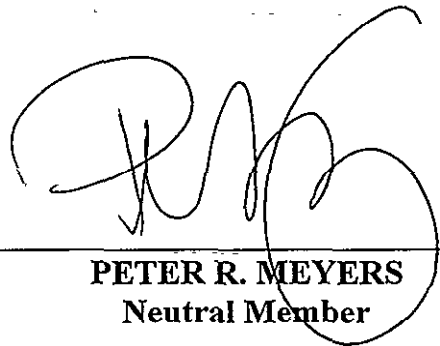
support the guilty finding, we next turn our attention to the type of discipline imposed.

This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

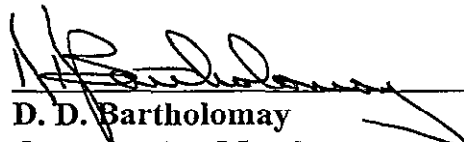
This Board recognizes that this Claimant has served the Carrier for over 23 years. However, given the serious wrongdoing on the part of the Claimant which raises questions about his honesty and judgment, this Board cannot find that the Carrier's action in terminating his employment was unreasonable, arbitrary, or capricious. Therefore, the claim must be denied.

AWARD:

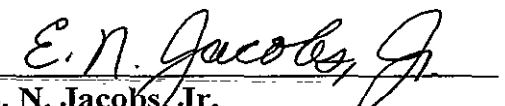
Claim denied.



PETER R. MEYERS
Neutral Member



D. D. Bartholomay
Organization Member



E. N. Jacobs, Jr.
Carrier Member

Issued at Chicago, IL on January 27, 1998