

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

Award No. 90

STATEMENT OF CLAIM: Claim of the Brotherhood that:

Claim on behalf of J. W. Cole requesting that he be reinstated and paid for time lost, as a result of his dismissal from service following investigation held on January 19, 1993, in connection with falsification and improper reporting of alleged on-duty injury/incident.

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.

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 falsifying an on-the-job injury and improperly reporting another one. That wrongdoing constituted a clear violation of Safety and General Conduct Rule 1000.

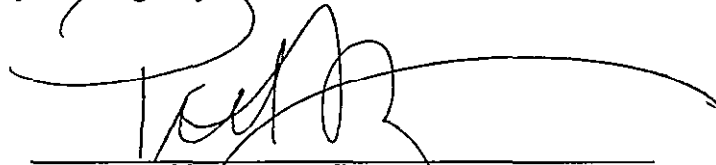
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed.

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

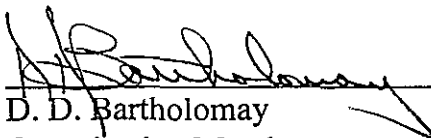
It is true that a rule violation of this kind generally leads to the discharge of the employee. However, given the fact that this Claimant had a previously clean record, this Board finds that the Claimant shall be reinstated without backpay. The time that the Claimant was off shall be considered a lengthy suspension.

AWARD

Claim sustained in part. The Claimant shall be reinstated but without backpay. The period that he was off shall be considered a lengthy suspension for the wrongdoing of which he was properly found guilty.



Peter R. Meyers
Neutral Member



D. D. Bartholomay
Organization Member



E. N. Jacobs, Jr.
Carrier Member

DATED: 12-22-94

DATED: December 15, 1994