

BEFORE PUBLIC LAW BOARD NO. 1837
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
AND
NORFOLK AND WESTERN RAILWAY COMPANY
Award No. 94

STATEMENT OF CLAIM: Claim of the Brotherhood that:

Claim on behalf of K. K. Swanigan requesting that he be reinstated and paid for time lost, as a result of his dismissal from service following investigation held on April 15, 1994, in connection with conduct unbecoming an employee and insubordination.

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 violating Carrier Rules when he made provocative, hostile and insubordinate remarks toward his supervisor on March 15, 1994.

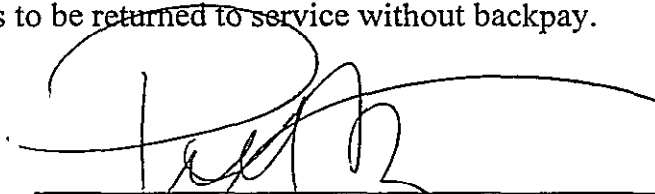
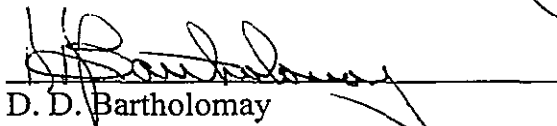
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed.

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

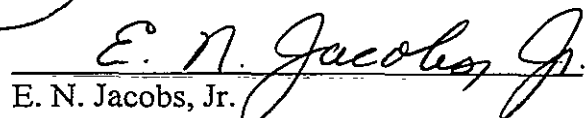
In the case at hand, the record reveals that the Claimant has served the Carrier well for a long period of time and has a relatively clean disciplinary record. Although the charges of which the Claimant was found guilty are serious, this Board finds that the discharge of the Claimant should be reduced to a lengthy suspension and that he shall be reinstated without backpay. The time that the Claimant was off shall be considered a suspension for the serious wrongdoing.

AWARD

Claim sustained in part. The discharge of the Claimant is reduced to a lengthy suspension and he is to be returned to service without backpay.


Peter R. Meyers
Neutral Member
D. D. Bartholomay
Organization Member

DATED: 12-22-94


E. N. Jacobs, Jr.
Carrier Member

DATED: December 15, 1994