

PUBLIC LAW BOARD NO. 6394

Award No. 22

Parties to Dispute:

Brotherhood of Maintenance of Way Employes
(Consolidated and Pennsylvania Federations)

and

Norfolk Southern Railway Company

Statement of Claim:

Claim on behalf of R. D. McAfee for reinstatement with seniority and all other rights unimpaired and pay for all time lost as a result of his three month actual suspension from service following a formal investigation on September 30, 2003, in connection with insubordination and falsifying payroll records.

(Carrier File: MW-BLUE-03-32-LM -252)

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 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.

Claim disposed of as follows:

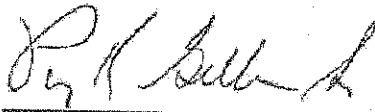
The record reflects that Claimant believed that he was entitled to an overtime assignment on August 2, 2003, flagging for a contractor that was performing steam cleaning on certain equipment. The assignment was given to another Foreman who had less seniority than Claimant. Claimant met with the Track Supervisor and the Assistant Division Engineer who explained to Claimant the basis for assigning the overtime to the other Foreman. When Claimant continued to insist that he was entitled to the overtime under the Agreement, the supervisors instructed Claimant not to submit the time but that if Claimant wished to pursue the matter further he should file a claim. Claimant, however, submitted for four hours of overtime for the flagging work.

Following the investigation, Carrier dismissed Claimant from service. Subsequently, Carrier reinstated Claimant to service, converting the dismissal to a three month suspension and loss of Foreman's seniority.

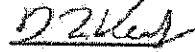
Upon our review of the record, we find that Carrier proved the charges by substantial evidence. We further find that the penalty of a three month suspension for such a serious offense was not arbitrary, capricious or excessive. However, we find that the penalty of forfeiture of Foreman's seniority was excessive. Accordingly, we will sustain the claim, but only to the extent of ordering Carrier to reinstate Claimant's Foreman seniority.



M. H. Malin
Chairman and Neutral Member



P. K. Geller, Sr.
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois, October 19, 2004.