

PUBLIC LAW BOARD NO. 6394

AWARD NO. 27

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
(CONSOLIDATED AND PENNSYLVANIA FEDERATIONS)**

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of F. Rangel requesting that he be made whole and returned to service with pay for all time lost, with seniority and vacation unimpaired, as a result of his dismissal from service following a formal investigation held on January 30, 2006, for his falsifying or omitting information concerning prior convictions of a crime on his employment application.

(Carrier File MW-DEAR-06-02-SG-009)

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.

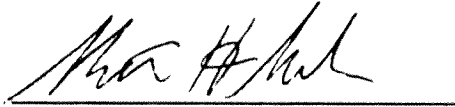
This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

Claim disposed of as follows:

Therecord reflects that on August 11, 2004, Claimant completed an application for employment with Carrier. The application asked whether the applicant had been convicted of any crimes, felonies and misdemeanors, within the last 15 years, and to list the date, location and nature of each conviction. Claimant disclosed a 1991 conviction for public intoxication but failed to disclose a 1994 conviction for misdemeanor possession of drug paraphernalia. The application plainly and clearly required disclosure of the 1994 misdemeanor conviction and Claimant failed to disclose it. There is no question that Carrier proved the charge by substantial evidence.

However, considering all of the circumstances, we find that the penalty of dismissal was excessive. The misdemeanor conviction that Claimant failed to disclose was almost ten years old at the time of the application. Moreover, by the time Carrier discovered the conviction and held the investigation. Claimant had been employed for approximately fourteen months. Although Claimant's failure to disclose the ten year

old conviction despite an explicit written instruction to do so raised questions about Claimant's reliability as an employee, those questions were answered to a certain extent by Claimant's fourteen months of successful employment. Accordingly, we award that Claimant be reinstated to service with seniority unimpaired but without compensation for time out of service.



M. H. Malin
Chairman and Neutral Member



B. A. Winter.
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on November 15, 2006