

PUBLIC LAW BOARD NO. 1837

Award No. 101

Parties to Dispute:

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

Statement of Claim:

1. The Carrier violated the Agreement when it improperly dismissed R. E. Phipps from service arbitrarily, without just and sufficient cause and without the benefit of an investigation (Carrier's file MW-FTW-94-110).
2. Trackman R. E. Phipps shall be reinstated with all rights unimpaired and be fully compensated for any and all monetary loss suffered as a result of his improper dismissal.

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 record in this case and we find that the Carrier has presented sufficient proof that the Claimant failed to live up to the requirements of Rules 49 and 5. The record reveals that the Claimant was off on a medical leave commencing August 17, 1994, and had been diagnosed with a variety of physical diseases and disorders. The record reveals further that the Claimant continued treatment and remain disabled up until January 16, 1995. The Claimant was instructed to furnish proof of his disability on September 16, 1994. He had to do that within ten days or return to work or he would have been considered to have forfeited his seniority. He was again told on October 19, 1994, that he had ten days to furnish medical documentation or he would be terminated.

When the Claimant failed to respond, the Carrier imposed the self-executing provisions providing for a forfeiture of seniority.

The record reveals that the Claimant eventually did send in to the Carrier the appropriate medical documentation. Although the provisions of Rules 5 and 49 are self-executing, this Board finds that the action taken by the Carrier in forfeiting the Claimant's seniority and terminating his employment was unreasonable, arbitrary, and capricious under these particular circumstances.

Under the limited circumstances of this case, this Board finds that the Claimant's seniority shall be restored and he shall be returned to service after satisfying the usual

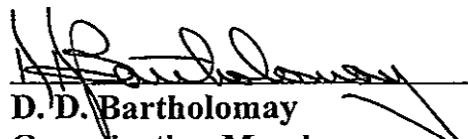
return-to-work physical. However, his claim for backpay is denied.

AWARD:

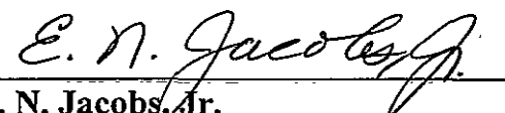
Claim sustained in part. Claimant's seniority will be restored and he is to be returned to service, upon satisfying the usual return-to-work physical. However, the Claimant's claim for backpay is denied.



PETER R. MEYERS
Neutral Member



D. D. Bartholomay
Organization Member



E. N. Jacobs, Jr.
Carrier Member

Issued at Chicago, IL on January 27, 1998