

PUBLIC LAW BOARD NO. 1837

Award No. 114

Parties to Dispute:

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

Statement of Claim:

Claim on behalf of R. A. Peak requesting reinstatement and pay for time lost as a result of his dismissal in connection with his excessive absenteeism in that he had been absent all or part of 27 days from January 9, 1997 through and including September 23, 1997. (Carrier File MW-FTW-97-96-LM-507)

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

After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claims should be disposed of as follows:

There is sufficient evidence in the record to support the finding that the Claimant was guilty of excessive absenteeism. The Claimant accumulated an atrocious[†]

absenteeism record between January 9, 1997, and September 23, 1997. However, it is also clear that the Claimant's absences were the result of substance abuse which he is trying to correct. The Claimant voluntarily admitted himself into the DARS Program.

Once this Board has determined that there is sufficient evidence 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 action to have been unreasonable, arbitrary, or capricious.

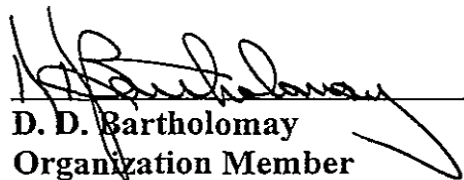
A violation of this kind may well lead to the discharge of the employee. However, given the Claimant's length of service and the particular circumstances involved in this case, this Board finds that the Claimant shall be reinstated without backpay. The time that the Claimant was off shall be considered a lengthy suspension.

AWARD:

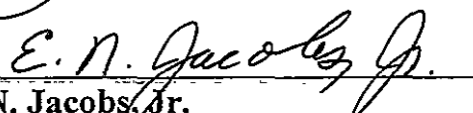
Claim sustained in part. Claimant is to be reinstated to work but without backpay. Claimant is required to pass a physical examination before being allowed to return to work. The time that the Claimant was off shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
Neutral Member



D. D. Bartholomay
Organization Member



E. N. Jacobs, Jr.
Carrier Member

Issued at Chicago, Illinois on June 22, 1998.