

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

Award No. 92

STATEMENT OF CLAIM: Claim of the Brotherhood that:

Claim on behalf of L. Bradley requesting that he be reinstated and paid for time lost, as a result of his dismissal from service following investigation held on March 9, 1993, in connection with marking off on sick leave and, during this sick leave, securing employment elsewhere.

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 record 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 marking off under false pretenses when he was employed elsewhere.

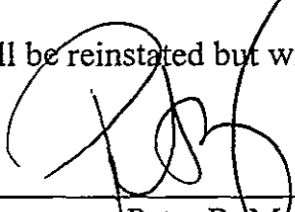
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions

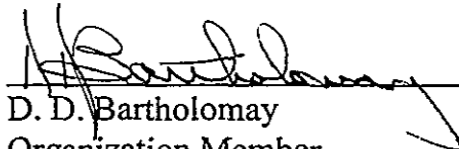
to have been unreasonable, arbitrary or capricious.

Given the previous record of the Claimant, this Board finds that he shall be reinstated but without backpay. The time he was off shall be considered a lengthy suspension.

AWARD

Claim sustained in part. The dismissal of the Claimant shall be reduced to a lengthy suspension. He shall be reinstated but without backpay.



Peter R. Meyers
Neutral Member

D. D. Bartholomay
Organization Member

E. N. Jacobs, Jr.
Carrier Member

DATED: 12-22-94

DATED: December 15, 1994