

PUBLIC LAW BOARD NO. 6394

AWARD NO. 8

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 M. A. Fife for reinstatement, vacation and all other rights unimpaired and pay for all time lost as a result of his dismissal in connection with a formal investigation held on October 3, 2001, concerning conduct unbecoming an employee when he claimed mileage reimbursement for use of his personal automobile on September 5, 6, 7, 10, 11, 12 and 13, 2001, when he was assigned and used a company vehicle on such dates.

(Carrier File MW-PITT-01-43-LM-356)

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 submitted for mileage reimbursement for use of his personal automobile on September 5, 6, 7, 10, 11, 12 and 13, 2001, when, in fact, he had used a Carrier vehicle. Claimant was not entitled to such reimbursement and Carrier acted reasonably in discrediting Claimant's assertion that he believed he had a right to the mileage payment. Accordingly, we find that Carrier proved the charges by substantial evidence.

Under the circumstances, however, we find that the penalty of dismissal is excessive. Claimant had twenty-six years of service. Most significantly, Carrier failed to call Claimant's foreman as a witness. The foreman

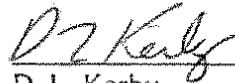
could have provided crucial testimony that may have established aggravating or mitigating circumstances. Consequently, we shall award that Claimant be reinstated to service with seniority unimpaired but without compensation for time held out of service.



M. H. Malin
Chairman and Neutral Member



P. K. Geller, Sr.
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on June 20, 2002