

**PUBLIC LAW BOARD NO. 6394**

**AWARD NO. 11**

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 R. A. Jessop for reinstatement with seniority and all other rights unimpaired and pay for all time lost as a result of his dismissal from service following a formal investigation on October 19, 2001, for violation of Rule G and engaging in unprofessional and inappropriate conduct with a non-employee while on company property without authority on August 9, 2001.

(Carrier File: MW-PITT-01-32-LM-284)

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:

Carrier proved the charges by substantial evidence. Indeed, Claimant admitted his guilt. However, considering all of the underlying facts and circumstances, we find that the penalty of dismissal was excessive. The factors that lead us to so find include:

The severity of the offense. See PLB 3445, Award No. 61.

At the time of the incident Claimant had twenty-five years of service with no prior disciplinary record and with several commendations for his performance.

At the time of the incident Claimant readily admitted his guilt and cooperated fully with Carrier.

At the time of the incident, Claimant was under the influence of alcohol. Claimant recognized his alcohol program and promptly enrolled in Carrier's DARS program, where he has made good progress.

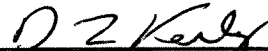
Accordingly, we award that Claimant be reinstated, with seniority unimpaired, but without compensation for time held out of service. Claimant's reinstatement is conditioned on his passing a return to duty physical, including drug and alcohol screening; on his continued compliance with the DARS program; and on his executing a release of records so that Carrier can monitor Claimant's compliance.



M. H. Malin  
Chairman and Neutral Member



J. Dodd  
Organization Member



D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on August 17, 2002