

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6394

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION - IBT RAIL CONFERENCE)	Case No. 45
and)	
)	Award No. 45
NORFOLK SOUTHERN RAILWAY COMPANY (FORMER)	
NORFOLK & WESTERN RAILWAY COMPANY))	
)	

Richard K. Hanft, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. L. Kerby, Carrier Member
Hearing Date: February 25, 2010

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed by letter dated September 17, 2009 upon Mr. N. Bell for the alleged violation of Company rules and policies in connection with charges of conduct unbecoming a Norfolk Southern employee in connection with the allegation that the Claimant removed a Sawzall Combo Set from Company property on or before August 7, 2009 and allegedly failed to follow Supervisor Tumpane's instructions to return the tool on August 10, 2009, was based upon unproven charges, unwarranted and a violation of the Agreement (Carrier's File MW-DEAR-09-71-LM-383).
2. As a consequence of the violation referred to in Part 1 above, Claimant N. Bell shall be reinstated with all rights and benefits unimpaired, compensated for any and all wages lost during his removal from service and have any mention of this discipline removed from his record.

Upon the whole record and all of 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.

AWARD:

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

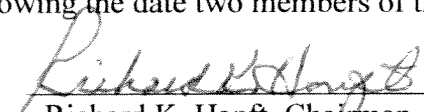
In April, 2009 Claimant purchased, for the Carrier's use, a Sawzall Combination Kit consisting of a Sawzall power tool, cutting blade, two batteries, a battery charger, a hammer drill, a flashlight and a carrying case. A terminal supervisor happened to be in the industrial supply store at the time of the purchase and charged Claimant with responsibility for the tool kit.

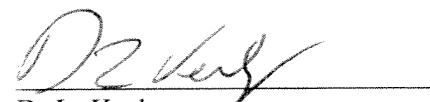
Some four months later, in August 2009, that same terminal supervisor asked Claimant to bring him the saw from that kit to cut side boards on the material handling truck. Although the Claimant replied that he had the tool, he did not produce it on that day. Two days later, the terminal supervisor saw Claimant after the morning safety meeting and again specifically instructed him to bring him the tool kit in order to cut the sideboards on the truck. Claimant returned a short while later with the saw to the kit but when the supervisor pulled the trigger on the saw, nothing happened. Claimant left the supervisor's office and returned shortly thereafter with the saw that was now working. The Claimant was observed by another supervisor in the vicinity of his personal vehicle during the time period while he was away from the supervisor's office. At that point, the terminal supervisor specifically instructed Claimant to bring the entire Sawzall Combination Kit to his office by Monday, August 10 or suffer serious consequences.

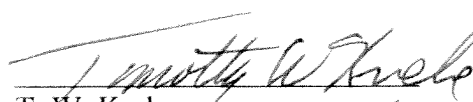
On Monday morning, Claimant admitted that he did not have the entire tool kit and had not seen all of the components to the kit for over two months. Claimant was removed from service at that time pending investigation. An investigation was held on September 1, 2009 in connection with charges of conduct unbecoming an employee concerning the removal of the Sawzall Combination Kit from Company property without proper authority and failure to follow the terminal supervisor's instructions to bring him the tool kit. Claimant was dismissed from service September 17, 2009.

We find the penalty of dismissal in this instance to be excessive. After thorough review of the record and consideration of the parties presentations and arguments, we conclude that this was not so much a matter of intentional dishonesty but more a case of Claimant being negligent in his duties as a foreman to be responsible for the Carrier's property. For that reason, Carrier is directed to reinstate Claimant subject to forfeiture of his foreman seniority rights and without compensation for time out of service.

Claim sustained in accordance with the findings. Carrier is directed to make this Award effective within thirty days following the date two members of this Board affix their signatures thereto.


Richard K. Hanft, Chairman


D. L. Kerby
Carrier Member


T. W. Kreke
Employee Member
May 3, 2010

Dated at Chicago, Illinois, April 8, 2010