

PUBLIC LAW BOARD NO. 6394

AWARD NO. 58

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissed from all service with Norfolk Southern Corporation) of Mr. J. McCollum issued by letter dated April 11, 2012 in connection with alleged conduct unbecoming an employee concerning his excessive absenteeism and failure to protect his assignment and follow instructions in that he was absent from his assignment without permission or authorization from proper authority on Wednesday, March 14, 2012 despite having been previously counseled and instructed on numerous occasions, most recently on February 28, 2012, concerning his attendance was excessive (Carrier's File MW-DEAR-12-10-LM-071).
2. As a consequence of the violation referred to in Part 1 above, Mr. McCollum shall be returned to work and compensated for all wages he could have earned from March 14, 2011."

Upon the whole record and all the evidence, after hearing, the Board finds 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 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:

The Claimant entered service for the Carrier on November 26, 2007 in the position of Trackman and was assigned to that position during the events that led to this case. The Claimant has a record of absenteeism and being late to work. The Claimant had been suspended for 19 days due to excessive absenteeism on December 6, 8, and 22, 2011. The Claimant was then late in reporting to work on February 27, 2012 for which he received a counseling session on his duty to protect his job assignment. In a subsequent

letter formalizing the counseling session, the Carrier specifically outlined that the Claimant should notify his supervisor at least one hour before the start of work if he was going to be late or absent for any reason (see Carrier Brief, Exhibit 2). On March 14, 2012, there is some dispute about the record. The Carrier maintains that on March 14, 2012 the Claimant was to report to work at 7:00AM but failed to do and notified a supervisor that he overslept at 8:12AM (see Transcript, pages 3-4). The Organization contends instead that the Claimant did report to work, but was about 10 minutes late arriving at approximately 7:10AM (see Carrier Brief, Exhibit B, page 6). Due to these events, the Carrier removed the Claimant from service pending a formal investigation.

The Carrier conducted an investigation into these events including a hearing on April 3, 2012. The Carrier found that the Claimant was guilty of excessive absenteeism, failure to protect his job assignment, and failure to follow supervisor instructions. The Claimant was notified of this decision and was dismissed via letter dated April 11, 2012.

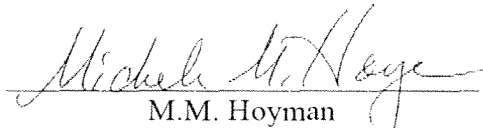
The Carrier argues that there is overwhelming evidence demonstrating the Claimant failed to protect his assignment. In support of this, the Carrier notes testimony from the Claimant's supervisor stating that the Claimant received numerous counseling sessions (before the formal counseling session on February 27, 2012) on this issue and yet still failed to consistently arrive to work on time (see Transcript, page 3). At the February 27 counseling session, the Claimant testified he was aware of Carrier rule GR-6 which states in part "Employees must report for duty properly rested at the designated time and place" (see Transcript, page 11). The Carrier claims the Organization's argument that the Claimant did report to work but was merely late by 10 minutes on March 14, 2012 has no factual support and even if it was true, the Claimant was still in violation of GR-6. In reference to this it also notes the counseling letter of February 27, in which the Claimant was directed to call a supervisor at least one hour before the start of a work shift in which he would be absent or late. Finally, the Carrier argues that its punishment of dismissal was appropriate because the Claimant's guilt is obvious and he has an undisputed record of previous issues related to absenteeism for which he received warnings and suspensions (see Employer Brief, page 13).

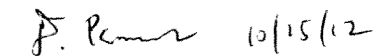
As the Claimant admits to some extent being late or absent for some of the dates in question, it is the Organization's position that the instant Case hinges on whether the Carrier's dismissal was excessive (see Organization Brief, page 6). The Organization argues that the Claimant was late on March 14, 2012 but takes responsibility for his actions and as such shows a willingness to improve and become a better employee. In regards to the February 27, 2012 date, the Organization argues that while the Claimant was late there were mitigating circumstances – mainly that it was his first day on that particular job and the directions he was given by the Foreman were inaccurate (see Organization Brief, pages 6-7). For these reasons, the Organization contends the Claimant's actions do not rise to the level where dismissal is appropriate (see Organization Brief, page 10).

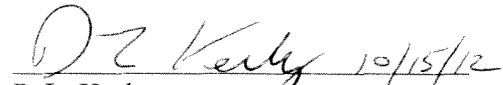
The Board notes that, although the Claimant has a clear history of absenteeism, there is some conflict about the events which led to this case. Specifically, it is unclear

whether the Claimant was absent or tardy on March 14, 2012. The Board finds that dismissal was not appropriate in this case. The Claimant, however, should be advised that while due to the circumstances of this case and the dispute about what happened on March 14 there was not enough of a pattern to warrant dismissal, his past actions are clearly on the way to establishing a pattern of extensive absenteeism that could warrant dismissal in the future if it continues. The claimant is to be reinstated with no back pay.

The claim is partially sustained.


M.M. Hoyman
Chairperson and Neutral Member

 10/15/12
D. Pascarella
Employee Member

 10/15/12
D.L. Kerby
Carrier Member

Issued at Chapel Hill, North Carolina on September 14, 2012.