

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6644

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES)
) Case No. 3
and)
) Award No. 3
NORFOLK SOUTHERN RAILWAY COMPANY)

Martin H. Malin, Chairman & Neutral Member
R. C. Robinson, Employee Member
D. L. Kerby, Carrier Member

Hearing Date: May 5, 2004

STATEMENT OF CLAIM:

1. The discipline (dismissed in all capacities) imposed upon Mr. E. M. Allen in connection with charges of alleged violation of General Safety Rule N in connection with a personal injury sustained at 7:45 a.m. on August 17, 2001, alleged absence without proper authority when he left the company property at 8:15 a.m. on August 17, 2001, and alleged conduct unbecoming an employee for allegedly making false and conflicting statements in connection with his personal injury of August 17, 2001 was arbitrary, capricious, unwarranted and in violation of the Agreement (Carrier's File MW-HARR-01-17-LM-326).
2. As a consequence of the violation referred to in Part (1) above, the charges against Mr. E. M. Allen shall now "... be dismissed and his record cleared of this incident, and upon his release from his attending physician, he be restored to service with all rights unimpaired."

FINDINGS:

Public Law Board No. 6644, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On April 8, 2003, Claimant entered into an agreement with Carrier acknowledging that he was permanently disabled and that there were no reasonable accommodations that would enable him to return to work. In consideration of a payment that was made to him, Claimant agreed that

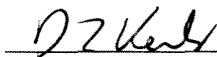
he would "not exercise my seniority rights nor attempt to return to work at any time in any capacity at any place" for Carrier and that "at the end of the second calendar year following the year in which I last performed compensated service or received vacation pay . . . my name will be removed from all seniority rosters and my employment relationship . . . will be terminated." In accordance with the April 8, 2003, agreement, Claimant's seniority will terminate on December 31, 2004. In light of the agreement, the instant case must be dismissed.

AWARD

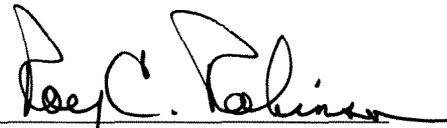
Claim dismissed.



Martin H. Malin, Chairman



D. L. Kerby
Carrier Member



R. C. Robinson
Employee Member

Dated at Chicago, Illinois, October 19, 2004.