

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 212

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

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

1. The Carrier's discipline (dismissed in all capacities) of Mr. A. Alexander issued by letter dated April 5, 2010 in connection with alleged excessive absenteeism and failure to protect his assignment from Thursday, August 13, 2009 through Monday August 17, 2009 was capricious, unjust and excessive (System File MW-ATLA-09-24-LM-396).
2. As a consequence of the violation referred to in Part 1 above, Mr. Alexander shall be made whole and restored to the service of the Carrier With pay for all time lost, seniority and vacation unimpaired."

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:

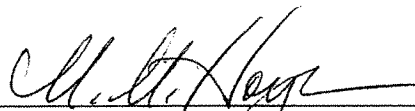
On August 13, 2009 the Claimant called in sick to work. Later on the same day, the Claimant's mother called in to work to say that he would be absent from work on August 14, 2009 and perhaps longer, due to his having been detained by the County Sheriff's Department. Although the Claimant was not scheduled to work over the weekend, he was also absent from work on his next scheduled work day, August 17, 2009. The Claimant was charged by the Carrier with excessive absenteeism and failure to protect his assignment for the period of August 13 through August 17, 2009 in a letter dated August 20, 2009. The matter was investigated after many postponements, with a hearing finally being held on March 24, 2010. In a letter dated

April 5, 2010 the Carrier informed the Claimant that he had been dismissed from service, after being found guilty as charged.

The charge in this case is the Claimant's failure to protect his job and excessive absenteeism. The question before the Board is whether the first day, second day and third day of absenteeism, starting with Thursday August 13 and ending through Monday August 17, constitute a failure on behalf of the Claimant to protect his job assignment or an excessive amount of absences. Looking for a moment at the specific issue of failure to protect his assignment, it is indisputable that this was the case. In PLB 1760, Award 93, *BMWED v. N.W. (Van Want)*, the Board found that a failure to protect an assignment "violates the implicit promise and the obligation contained in the employer and employee relationship." This was echoed in other cases (see for example 2 NRAB, Award 7852, *CM v. SOU (Lieberman)*) in which the ruling was that an "employee has an obligation to report to work regularly and on time regardless of personal problems; this is a fundamental aspect of the employment relationship."

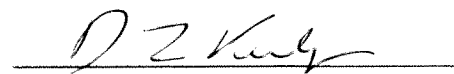
In such cases, the employer considers the validity of the reason for absence. This Board finds that Claimant's inability to protect his work assignment due to incarceration does not serve as a legitimate excuse for his absences. In coming to that conclusion, we rely in part on the reasoning utilized by PLB 3445, Award 33, *BMWED v. SOU (Zumas)*. In addition, on the first day of absence by the Claimant the Board notes the Claimant failed to give what appears to be the real reason for his absence – that he was incarcerated. Instead, the Claimant stated he could not come to work because he was sick, and in light of the case record we conclude that such an excuse constitutes no notice was effectively given for the first day of the absence. The case record also shows that the Claimant repeatedly postponed his own hearing, for reasons that are not clear, for a total of eleven postponements. Given the Claimant's short seniority (2 years) and his lack of attention to attendance policies, the Board concludes that the dismissal was warranted and for just cause.

The claim is denied.


M.M. Hoyman
Chairperson and Neutral Member

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T. Kreke
Employee Member


D.L. Kerby
Carrier Member

Award Date: June 30, 2011