

SPECIAL BOARD OF ADJUSTMENT 1048

Award No. 107
Case No. 107

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Norfolk Southern Railway Company

STATEMENT OF CLAIM:

1. The dismissal of Foreman Tommy Hamilton, Jr., for his alleged conduct unbecoming an employe in connection with unauthorized use of company telephone card from October, 1999 to March 2001 was without just and sufficient cause and excessive punishment (System File MW-BLUE-01-05-LM-061).
2. Foreman Tommy Hamilton, Jr. shall now [be] reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

This Board, upon the whole record and all of the evidence, after hearing, finds and holds as follows:

1. That the Carrier and the Employees involved in this dispute are, respectively, Carrier and Employees within the meaning of the Railway Labor Act, as amended;; and
2. That the Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction over the parties and the subject matter involved in this dispute.
3. This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

OPINION OF THE BOARD:

The present dispute arose as a result of the Carrier's determination that the Claimant was guilty of conduct unbecoming an employee because the Claimant had used a Company telephone credit card to make personal calls from his home without

authorization during the period from February 2000 to February 2001. The record reflects that the Claimant admitted making such personal calls with the Company telephone credit card. (Carrier Exhibit A at page 12 of 56.)

The Carrier asserts that the action of the Claimant constituted a dishonest act akin to theft. The Carrier notes that the personal telephone calls amounted to \$389.23.

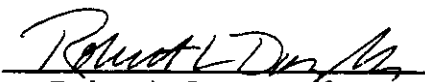
A careful review of the record confirms that the Claimant received proper advance notice from the Carrier about the requirement that the Claimant limit the use of the Company telephone credit card to Company business. As a result, no basis exists to excuse, ignore, or justify the actions of the Claimant.


An exhaustive review of the record fails to reveal any basis to substantiate the Organization's claim that the Carrier treated the Claimant more severely than other similarly situated employees. In fact, the record fails to identify any other employee or employees who had engaged in similar conduct to the same extent as the Claimant. The only two employees identified by the Organization did not engage in anywhere near the same degree of improper use of a Company telephone credit card as the Claimant. In fact, the record fails to prove that one of the two referenced employees misused a Company telephone credit card at all. With respect to the other employee, the minor misuse of the Company telephone credit card occurred incidental to the use of the telephone credit card to conduct Company business. As a result, insufficient evidence exists to prove that the Carrier treated the Claimant more severely than any other similarly situated employee or employees. In the absence of such disparate treatment, no basis exists to sustain the claim.

AWARD:

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

The Claim is denied.


Robert L. Douglas
Chairman and Neutral Member


D.D. Bartholomay
Organization Member
Dated: 6/10/02


D.L. Kerby
Carrier Member