

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 122

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim in behalf of L. D. Lee for reinstatement to service with seniority, vacation and all other rights unimpaired and pay for time lost as a result of his dismissal from service following a formal investigation held on December 14, 2001, in connection with his violation of Rule N of the Carrier's Safety and General Conduct Rules and for conduct unbecoming an employee for giving false and conflicting information concerning the nature of an alleged on-duty injury reported to have occurred on November 21, 2001.

(Carrier File No. MW-ROAN-01-51-LM-471)

Upon the whole record and all 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 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 a precedent in any other case.

AWARD

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

Carrier proved by substantial evidence that Claimant failed to report his back injury in a timely manner. Rule N requires employees to report injuries sustained on duty before leaving Company premises. Rule N further requires any employee who sustains an off-duty injury or illness adversely affecting his ability to perform his regularly assigned duties to inform his supervisor before reporting for his next shift or tour of duty. Claimant felt pain in his back just before the beginning of his shift on November 21, 2001. He believed he had injured his back while moving furniture the prior weekend. However, Claimant failed to notify his supervisor in a timely manner. It was not until November 26, 2001, that Claimant reported that he would not be coming to work because of a need to see his doctor concerning the back pain.

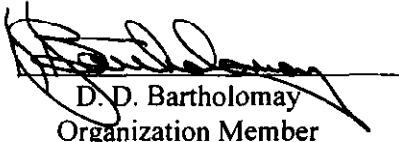
Carrier did not prove by substantial evidence that Claimant made false or conflicting statements regarding an alleged on-duty injury. The record contains no evidence that Claimant ever stated that he had sustained an on-duty injury. At most, Claimant stated that he did not know if he had injured his back on duty and there is no evidence that, by so stating, Claimant misrepresented the state of his knowledge. Claimant did tell co-workers that he believed he had aggravated his back while moving furniture and he did state that he felt a flare-up of back pain the morning of November 21 as he sat in a chair to await the safety meeting at the beginning of his shift. Such statements are not conflicting and were not shown to have been false.

Accordingly, we conclude that Carrier proved the alleged Rule N violation but failed to prove the charge of

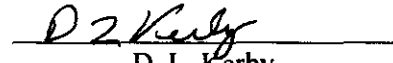
conduct unbecoming an employee. The Rule N violation is an extremely serious offense. It is critically important that employees promptly report even off-duty injuries that could impede their ability to perform their jobs. By working without reporting his back injury, Claimant risked further harm to himself and to his coworkers. However, given Carrier's failure to prove the charge of conduct unbecoming an employee and recognizing Claimant's twenty years of service, we find that the penalty of dismissal was excessive. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time held out of service.



M. H. Malin
Chairman and Neutral Member



D. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on October 11, 2002