

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 125

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of K. D. Jeffers 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 October 22, 2002, in connection with his failure to properly report a personal injury that allegedly occurred on August 30, 2002, and receiving medical attention for such alleged injury without promptly notifying his supervisor and making false and conflicting statements in connection with the alleged injury.

(Carrier File MW-FTW-02-47-LM-248)

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

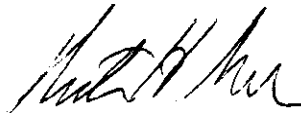
After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant allegedly injured his back while loading kegs of spikes on August 30, 2002. Claimant telephoned his supervisor on September 2, 2002. Claimant and the supervisor agreed that Claimant called the supervisor on September 2, 2002, and advised that he was experiencing back pain. Claimant testified that he told the supervisor that he injured his back the prior Friday, loading the spikes. The supervisor testified that Claimant expressly stated that the pain was not related to any on-duty injury and that Claimant did not report an on-duty injury until September 11, 2002. As an appellate body, we are not in a position to evaluate the relative credibility of the witnesses. Instead, we defer to the credibility determinations made on the property. Accordingly, we find that Carrier proved that Claimant violated Rule N by not reporting his injury in a timely manner and also made conflicting statements, stating on September 2 that the back pain was not work-related and on September 11 that it was.

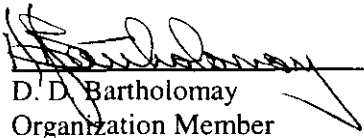
However, there is no dispute that Claimant did in fact load the spikes on August 30, 2002. Furthermore,

the supervisor testified that Claimant mentioned the loading of the spikes when he called on September 2, 2002. Thus, although we find that Carrier proved that Claimant failed to report the injury in a timely manner and made conflicting statements, we cannot say that Carrier proved that Claimant falsified the claim of an on-duty injury.


Considering all of the circumstances, we conclude that Carrier had cause to discipline Claimant but that the penalty of dismissal was excessive. However, the failure to report the injury in a timely manner and the inconsistent statements are themselves serious offenses, warranting significant discipline, albeit not dismissal. Consequently, we shall award that Carrier reinstate Claimant to service with seniority and benefits 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 November 26, 2003