

**SPECIAL BOARD OF ADJUSTMENT NO. 1048**

**AWARD NO. 127**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf of T. D. Lovelace 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 July 17, 2002, in connection with his violation of Rule G in that he tested positive on a Breath Alcohol Test on June 27, 2002.

(Carrier File MW-DEAR-02-30-LM-145)

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:

The record is clear that Claimant violated Rule G. Claimant tested positive on a Breath Alcohol Test and on a confirmatory test administered eighteen minutes later. Claimant's claim that the alcohol was due to his having used Listerine shortly before the test is inconsistent with the confirmatory test. Although the use of Listerine can cause a positive Breath Alcohol Test, the alcohol from the Listerine is not absorbed into the blood and completely dissipates within fifteen minutes. Thus, even if Claimant had used Listerine immediately before the first test, the confirmatory test would not have registered a positive alcohol level. Accordingly, we find that Carrier proved the charge by substantial evidence.

The record reflects that Carrier offered Claimant an opportunity to enter its DARS program and thereby return to service. Claimant chose not to do so. Under these circumstances, we cannot say that the penalty of dismissal was arbitrary, capricious or excessive.

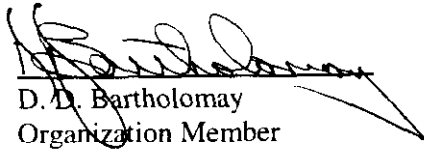
The claim is denied.

SBA 1048  
Awd 127  
Page 2



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M. H. Malin  
Chairman and Neutral Member



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D. D. Bartholomay  
Organization Member



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D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on November 26, 2003