

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 130

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim in behalf of W. L. Taylor 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 May 9, 2003, in connection with his failure to protect his assignment and being absent without permission on April 21, 22, and 23, 2003 and for excessive absenteeism in that since January 23, 2003, he failed to protect his assignment on seven days.

(Carrier File MW-FTW-03-17-LM-121)

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.

AWARD

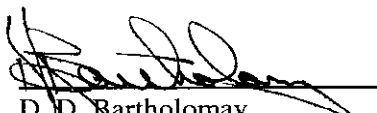
After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The record contains substantial evidence that Claimant failed to protect his assignment on April 22, 2003, when he failed to call in and was absent, and on April 23, 2003, when he called in late. Claimant did call in his absence on April 21, 2003, and requested use of a vacation day to attend a funeral. He was told to bring in documentation. The documentation that he brought in did not substantiate that the funeral took place on April 21. Furthermore, the record reflected that Claimant was absent without permission and without calling on January 23 and 24, and March 17 and 18, 2003. Accordingly, we find that Carrier proved the charge of excessive absenteeism by substantial evidence.

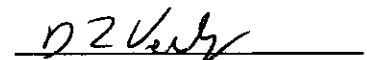
However, considering all of the facts and circumstances, particularly Claimant's 26 years of service, we find the penalty of dismissal to be excessive. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time held out of service.



M. H. Malin
Chairman and Neutral Member



D. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on September 29, 2004