

**SPECIAL BOARD OF ADJUSTMENT NO. 1048**

**AWARD NO. 133**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf of L. J. Kenshalo for reinstatement to service with seniority, vacation and all other rights unimpaired and pay for all time lost as a result of his dismissal from service following a formal investigation held on July 18, 2003, in connection with his violation of Rule N for failure to properly report a personal injury that allegedly occurred on January 27, 2003, failure to notify regarding obtaining medical attention for this alleged on-duty injury and making false and conflicting statements in connection with this alleged injury.

(Carrier File No. MW-ROAN-03-30-SG-169)

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:

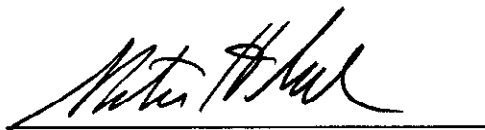
On January 27, 2003, Claimant was operating an anchor adjusting machine when he collided with a pickup truck at a road crossing. Claimant stated that he was not injured. Claimant testified that the following day, he began experiencing pain in his back and numbness in his arms and sought medical attention. Claimant, who had been removed from service pending investigation of the accident, testified that he called the Track Supervisor on January 29, 2003, and reported the changed circumstances and that he did not know for sure whether the accident caused his medical condition. However, the Track Supervisor testified that he and Claimant did not speak on January 29, 2003, that he called Claimant on February 2, 2003, to advise Claimant to return to work and that Claimant reported he had seen a chiropractor and would be off work for a month. According to the Track Supervisor, he asked Claimant whether the medical condition was work-related and Claimant replied that it was not. The Track Supervisor further testified that Claimant called him on April 13, 2003, and advised that Claimant would be unable to return to work when the gang began its production season the following day but did not indicate that his medical condition was job-related. A claim agent testified that he called Claimant in mid-March and Claimant again stated that his condition was not work-related. However, on May 14, 2003, Carrier received a letter from Claimant's attorney claiming that Claimant was injured on duty on January 27, 2003.

This case, thus, involves a conflict in credibility between Claimant and the Track Supervisor and Claim Agent. As an appellate body, we do not observe the witnesses and are in a poorer position than the hearing officer to assess witness credibility. Consequently, we generally defer to credibility determinations made

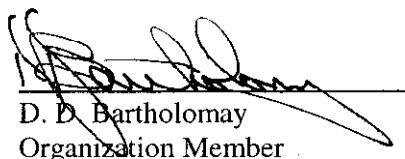
on the property. In the instant case, we see no reason to deny the credibility determinations made on the property the deference to which they generally are entitled.

Accordingly, we hold that Carrier proved the alleged violations of Rule N by substantial evidence. Claimant, through his attorney, claimed to have been injured on duty on January 27, 2003. However, on several occasions, Claimant represented to Carrier that his medical condition was not job-related. Furthermore, at the hearing, Claimant testified that he did not know whether the accident on January 27 caused his medical problems. At another point in his testimony, Claimant indicated that his chiropractor had advised that his problems were the result of arthritis in his neck.. On this record, we hold that Carrier further proved the charge of false and conflicting statements by substantial evidence.

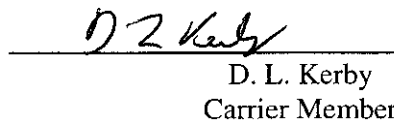
In light of the above holdings, the Claim is denied.



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