

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 163

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of J. P. Fultz for pay for reinstatement to service after his dismissal following a formal investigation on February 28, 2007, concerning his failure to protect his job assignment and his excessive absenteeism.

(Carrier File MW-WHEL-07-02)

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.

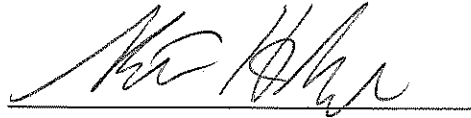
AWARD

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

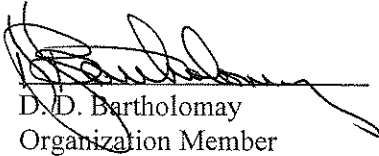
The record reflects that Claimant was scheduled to return to work from a disciplinary suspension. With his supervisor's concurrence, he received two weeks vacation, making his scheduled return date January 17, 2007. Claimant did not report for service and did not contact his supervisor or other proper authority to request further time off. On February 6, 2007, Carrier notified Claimant to report for an investigation. On February 12, 2007, Claimant contacted his supervisor and advised that he was under a doctor's care and unable to work. He submitted a doctor's note the following day which indicated that Claimant was under care and not released to return to work until March 3, 2007.

There is no question that Claimant absented himself without authority. Regardless of whether Claimant was physically disabled from working, Claimant was required to notify supervision and obtain authority for his absences. He failed to do so and may not have come forward at all had Carrier not noticed him for an investigation. Carrier clearly proved the charges by substantial evidence.

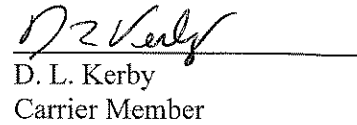
However, considering all of the surrounding circumstances, we find that the penalty of dismissal was excessive. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time out of service. Claimant's reinstatement is conditioned on his passing a physical exam and such other requirements that Carrier may reasonably impose.



M. H. Malin
Chairman and Neutral Member



D. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on January 28, 2008