

**SPECIAL BOARD OF ADJUSTMENT NO. 1048**

**AWARD NO. 182**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf of J. L. Lusk for reinstatement 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 that commenced on January 29, 2009, and was concluded on February 27, 2009, concerning failure to protect his job assignment and his excessive absenteeism in that he was absent from his work assignment without proper authority on four days between December 9 and December 29, 2008, and his failure to properly notify appropriate supervision prior to those absences.

(Carrier File MW-ROAN-09-01-SG-001)

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.

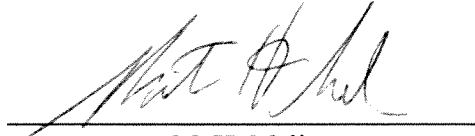
**AWARD**

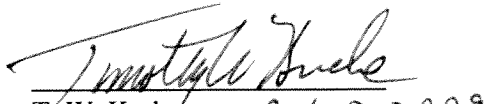
After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The record reveals that Claimant was absent on December 9, 22 and 29, 2009, and that he reported five hours late on December 18, 2009. Moreover, the record makes clear that Claimant failed to properly notify his supervisor of his absences and tardiness. On December 9, he did call in prior to the start of his shift but he advised his supervisor that he would be late. Instead, he failed to show at all and never called back to advise that he would be absent. On December 18, he called in two hours after the start of his shift. Claimant claimed that he had car trouble on December 22 and 29 and that a co-worker with whom he had arranged a ride failed to pick him up. However, it was Claimant's responsibility to get himself to work on time and to ensure proper transportation to work. We conclude that Carrier proved the charge by substantial evidence.


The record reveals that prior to his dismissal Claimant was issued three warnings and a 30-day suspension for absenteeism. The suspension was issued less than two months before the latest spate of

absenteeism and tardiness. It is apparent that Carrier properly resorted to progressive discipline in an effort to correct Claimant's behavior. It is equally apparent that those efforts were not successful. The penalty of dismissal was not arbitrary, capricious or excessive and the claim must be denied.

  
M. H. Malin  
Chairman and Neutral Member

  
T. W. Kreke  
Organization Member

Oct 5, 2009

  
D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on September 24, 2009.