

**SPECIAL BOARD OF ADJUSTMENT NO. 1048**

**AWARD NO. 183**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim on behalf of E. A. Perdue 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 was held on April 28, 2009, concerning failure to protect his job assignment and his excessive absenteeism in that he was absent from his work assignment without proper authority beginning March 25, 2009, and his failure to properly notify appropriate supervision prior to those absences.

(Carrier File MW-BLUE-09-20-BB-177)

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.

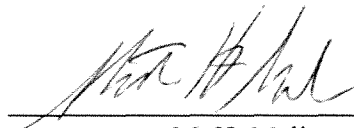
**AWARD**


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 March 25 - April 6, 2009. On March 26, 2009, he reported late and was sent home. The record makes clear that Claimant failed to properly notify his supervisor of his absences and tardiness.

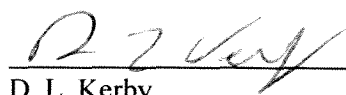
Claimant maintained that his absences were due to anxiety brought on by a divorce proceeding in which he was involved. However, the record reflects that on March 29, Claimant called the Assistant Division Engineer and inquired about FMLA leave, the ADE told him to contact Personnel but Claimant never followed up. Claimant produced a doctor's note at the hearing but the note was dated April 27 and merely stated that the "patient suffers from anxiety and panic attacks." The note did not state that Claimant was medically disabled from working on the dates he was absent. Furthermore, the note did not state that Claimant was medically incapable of notifying supervision concerning his need to be absent. We conclude that Carrier proved the charge by substantial evidence.

The record reveals that prior to his dismissal Claimant was issued a reprimand and a 10-day deferred suspension. 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.

  
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M. H. Malin  
Chairman and Neutral Member

  
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T. W. Kreke  
Organization Member

OCT 5, 2009

  
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D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on September 24, 2009.