

SPECIAL BOARD OF ADJUSTMENT NO. 1048

Award NO. 38

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of L. A. Elliott requesting that he be reinstated with his seniority and paid for all time lost because of his dismissal as a result of investigation held on August 24, 1992, in connection with his failure to comply with the Company's Medical Policy and instructions from Medical Director J. P. Salb, in his letter dated June 4, 1990, "...that in order to be eligible to return to active service, he must complete any rehabilitation required by DARS...."

[Carrier File: MW-ROAN-92-26]

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

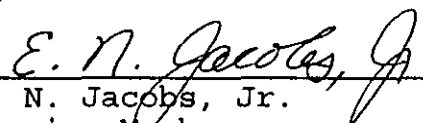
After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant shall present himself to Carrier within thirty days of the date of this award and take and pass a physical examination and drug screen. If he fails to do either he shall remain dismissed. If he passes the drug screen and physical he shall be returned to duty without pay for time lost. Upon return to duty he will be subject to Carrier's DARS program.

Claim sustained as provided herein.


John C. Fletcher


Richard A. Lau
Organization Member


E. N. Jacobs, Jr.
Carrier Member

Issued at Norfolk, Virginia on August 30, 1993