

SPECIAL BOARD OF ADJUSTMENT NO. 1048

Award NO. 95

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

Norfolk Southern Railway

STATEMENT OF CLAIM:

Claim on behalf of E. W. Stone, Jr. for reinstatement 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 on June 16, 1999, for violation of Rule N, falsification of an alleged on-duty injury and making false and conflicting statements in connection with such alleged on-duty injury.

(Carrier File MW-LMPT-99-1)

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

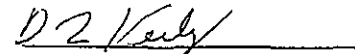
After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

Claimant was dismissed for failing to properly report an alleged on-duty injury, falsifying such injury and making false and conflicting statements in connection with the injury. The record reveals that the alleged on-duty injury occurred on November 9, 1998, but that Claimant did not report it until the following April, after his attorney filed a claim on his behalf. The record further reveals that Claimant made false and conflicting statements concerning the alleged injury. Accordingly, we conclude that Carrier proved Claimant's guilt by substantial evidence.

However, considering all of the facts and circumstances of this case, including Claimant's length of service and the apparent role of Claimant's attorney in this matter, the Board finds that dismissal is an excessive penalty. Accordingly, Carrier is ordered to reinstate Claimant to service with seniority and benefits unimpaired, but without compensation for time held out of service.


M. H. Malin


R. A. Lau
Organization Member


D. L. Kerby
Carrier Member

Issued at Chicago, IL on December 21, 1999