

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 135

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of E. E. Smith for reinstatement to service 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 held on July 24, 2002, in connection with his failure to follow written instructions to supply updated medical records/reports and current status of his medical condition to the Company medical director.

(File MW-CN-01-18-BB-494)

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.

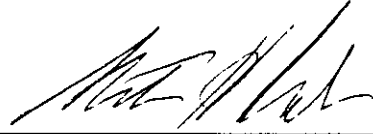
AWARD

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

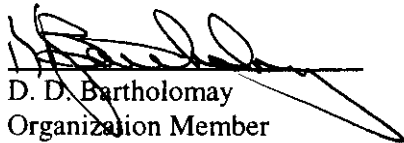
The record reflects that Claimant last worked on March 8, 2000, after which he marked off sick. On October 3, 2001, the Supervisor Administrative Services wrote Claimant advising him to contact the nearest Track Supervisor's office to arrange for a return-to-work physical or to supply a statement from his physician stating why he could not return to service. On October 31, 2001, the Division Engineer wrote Claimant that Claimant had not arranged for a return-to-work physical and that no medical records had been received. The Division Engineer instructed Claimant to provide updated medical reports/records concerning his medical status within ten days of receipt of the letter and warned Claimant that failure to comply with the instructions could subject him to disciplinary action. The letter was received at Claimant's residence on November 3, 2001. Claimant did not respond.

Claimant was noticed for investigation for January 7, 2002. Following two postponements, the investigation convened on March 7, 2002. Claimant did not appear. The investigation was recessed and several additional postponements were granted. The investigation reconvened on July 24, 2002 and Claimant again did not appear. A recess was taken to allow Claimant's representatives to attempt to contact him. They were unsuccessful and the investigation proceeded in absentia.

It is clear that Carrier proved the charge by substantial evidence. Under all of the circumstances presented, we cannot say that the penalty of dismissal was arbitrary, capricious or excessive. The claim is denied.



M. H. Malin
Chairman and Neutral Member



D. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on December 29, 2003