

**SPECIAL BOARD OF ADJUSTMENT 1049**

**CASE NO. 179**

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier's File: MW-BHAM-07-06-LM-131)

Statement of Claim:

Claim on behalf of K. R. Walker 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 April 16, 2007, concerning failure to protect his job assignment and his excessive absenteeism in that he was absent from his work assignment without proper authority from March 20 through March 22, 2007, and his failure to properly notify appropriate supervision prior to those absences.

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' presentation, the Board finds that the claim should be disposed of as follows:

BACKGROUND

K. R. Walker, the Claimant herein, entered the Carrier's service on April 10, 2006 as a Laborer. The instant matter concerns the propriety of the Carrier's decision to dismiss the Claimant for his failure to protect his assignment and for his excessive absenteeism. The record reflects that the

Claimant failed to report for duty, generally on a “no call, no show” basis, on March 20 through March 22.

## DISCUSSION

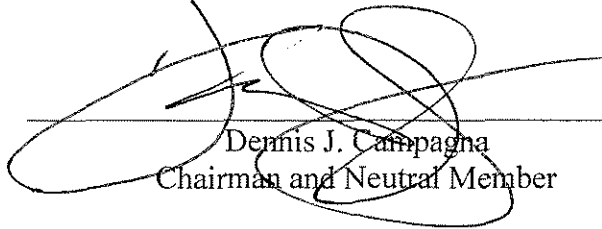
Initially, this Board notes that it sits as a reviewing body and does not engage in making *de novo* findings. Accordingly, we must accept those findings made by the Carrier on the Property, including determinations of credibility, provided they bear a rational relationship to the record.


At the investigation, the Carrier sustained its burden of proof by establishing, through substantive credible evidence, that subsequent to specific instructions from his Supervisor on how to protect his assignment, the Claimant proceeded on a course of unapproved absences that began on November 2<sup>nd</sup> and 3<sup>rd</sup> 2006. These two dates represented the Claimant’s eleventh and twelfth instances of absence during his first six months of service with the Carrier. Despite a letter of warning issued to the Claimant on November 3, 2006, the Claimant was subsequently absent on December 26 and 27, 2006. These most recent instances resulted in a Letter of Reprimand being issued to the Claimant. The Claimant was counseled again on January 10, 2007 following another instance of an unauthorized absence. On Tuesday March 20<sup>th</sup>, the Claimant again failed to report for his assignment and had not obtained permission from his Supervisor to be off that day. The Claimant remained absent through March 22<sup>nd</sup> and was for all intents and purposes “no call, no show.” The Claimant reported for work on March 23<sup>rd</sup> and thereupon advised the Carrier that he was unable to call his Supervisor’s cell phone from jail. Following a formal investigation held on April 16, 2007, the Hearing Officer, after reviewing the transcript of the proceedings, determined that the Claimant was guilty as charged, and after considering the severity of the offense and the Claimant’s short tenure with the Carrier, advised the Claimant by letter dated May 1, 2007 that he was dismissed from the Carrier’s service. It is significant to the Board that during his testimony, the Claimant did not dispute his numerous instances of absence, and admitted that his absenteeism was unacceptable. Governing from the Claimant’s abysmal attendance record however, it is clear that he failed to practice what he understood his obligations to be. Given these undeniable facts, together with the Claimant’s short tenure with the Carrier, this Board cannot find the Carrier’s action in dismissing

the Claimant to have been unreasonable, arbitrary or capricious. Accordingly, the claim must be denied.

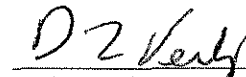
CONCLUSION

The Claim is denied.

  
\_\_\_\_\_  
Dennis J. Campagna  
Chairman and Neutral Member

  
\_\_\_\_\_  
T. Kreke  
Organization Member

June 27, 2008

  
\_\_\_\_\_  
D.L. Kerby  
Carrier Member

Dated May 31, 2008