

**SPECIAL BOARD OF ADJUSTMENT 1049**

**CASE NO. 181**

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier's File: MW-PITT-07-75-SG-376)

Statement of Claim:

Claim on behalf of J. C. Hill 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 November 1, 2007, concerning failure to protect his job assignment and his excessive absenteeism in that he was absent from his work assignment without proper authority beginning September 24, 2007, and his failure to properly notify appropriate supervision prior to these 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

J. C. Hill, the Claimant herein, entered the Carrier's service on March 20, 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 and was "no call, no show" in that he failed to contact his Supervisor regarding his absence. The Supervisor's call to the Claimant's home to inquire about the

Claimant's absence went unanswered even though he left the Claimant a voice mail message as to the nature of his call. The Claimant failed to report for the remainder of the week on a "no call, no show" basis. At the end of that week, the Claimant finally contacted his Supervisor to inform him that he had been off from work due to "family problems". While the Claimant's Supervisor fully expected the Claimant to report for work on the following Monday, October 1, 2007, the Claimant again failed to report and was absent through October 3, 2007 and again failed to contact his Supervisor regarding his intended absence. As a result, by letter dated October 3, 2007, the Claimant was summoned to an investigation. Following a formal investigation held on November 1, 2007, the Hearing Officer determined that the Claimant was guilty of the charges, and after considering the severity of the offense together with the Claimant's short tenure of service, advised the Claimant by letter dated November 15, 2007 that he was dismissed from service.

### 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.

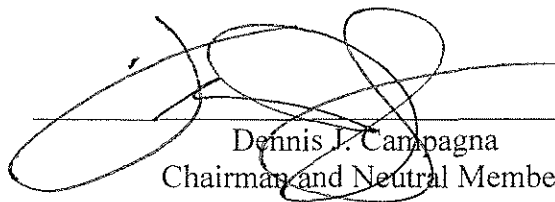
At the investigation, the Carrier sustained its burden of proof by establishing, through substantive credible evidence, that during the period at issue, the Claimant was guilty of excessive absenteeism and failing to protect his assignment as a result of his continuous absence over a two week period. The record also reflects that the Claimant made no attempt to contact the Carrier of his absence. Moreover, there is nothing in the record that explained the Claimant's repeated failure to notify his Supervisor of his impending absences. Finally, the record also reflects that this is not a case where the Carrier rushed to judgment seeking an early dismissal of the Claimant's employment. In fact, the record demonstrates that on May 15, 2007, the Rail Gang Supervisor issued a letter of counseling to the Claimant and impressed upon the Claimant his obligation to be regular in attendance as well as the procedures for obtaining permission to be absent from work pursuant to Safety and General Conduct Rule GR-6. It is significant that during the formal investigation, the Claimant did not deny the allegations against him.

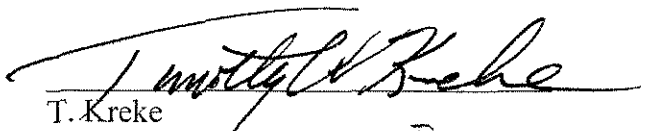
Given the foregoing, while the Carrier has good reason to seek an affirmation of the Claimant's termination, there is an adequate basis in this record to provide the Claimant with one last chance to save his job. In this regard, the record reflects that the Claimant willingly accepted responsibility for his attendance shortcoming, and was contrite in the process. In addition, there is an adequate basis in the record to conclude that the Claimant's absences together with his continued failure to contact his supervisor were directly attributable to significant family problems. Accordingly, without setting a precedent for future cases which must stand on their own facts, while the Claimant's attendance issues are no doubt serious, on the basis of this record, the Board finds that he should be reinstated to his position as a Laborer, but without back pay.

Given the undisputed fact that being regular in attendance is an essential requirement of any job, the Board must impress upon the Claimant that he is duty bound to improve his attendance and to comply with all Carrier Rules and Regulations in regard thereto, particularly with respect to his duty to notify the Carrier of any instances where he might be legitimately late or absent. Finally, given the unique circumstances of this case, the Board strongly recommends that the Claimant contact the Employee Assistance Program (EAP) and take advantage of any assistance they might offer.


### CONCLUSION

The Claim is sustained consistent with the findings and conclusions noted above.

  
Dennis J. Campagna  
Chairman and Neutral Member

  
T. Kreke  
Organization Member

*June 27, 2008*

  
D.L. Kerby  
Carrier Member

Dated: May 31, 2008