

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 194

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of J. C. Tollison, for reinstatement to service seniority, vacation and all other rights unimpaired and be made whole for all lost wages, as a result of his dismissal from service following a formal investigation held on February 4, 2008, for conduct unbecoming an employee ns falsifying Daily Track and Inspection Reports for alleged track inspections on December 4 and 7, 2007 and January 15 and 17, 2008.

(Carrier File MW-GNLV-08-05-LM-077)

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.

AWARD

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

The record reflects that Claimant, who was assigned as an Assistant Track Supervisor, filed track inspection reports for December 4 and 7, 2007, and January 15 and 17, 2008, which claimed to have inspected track but that Claimant never obtained track authority from the dispatcher or joint operating authority from another employee holding track authority for the track claimed to have been inspected. Although properly notified of the investigation. Claimant chose not to attend. Consequently, the record is devoid of any explanation as to how the reports of inspection could be accurate in the absence of authority to hi-rail the track that Claimant reported he inspected. We conclude that Carrier proved the charge by substantial evidence. Dismissal for such blatant acts of dishonesty is not arbitrary, capricious or excessive. The claim is denied.



M. H. Malin

Chairman and Neutral Member



T. W. Kreke
Organization Member

OCT. 5, 2009



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on September 24, 2009