

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 198

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Track Laborer J.L. Jefcoat for conduct unbecoming an employee in connection with omission or falsification of information on a Med-15 Form on January 11, 2010 and with failure to protect his assignment in that he was absent every work day since February 23, 2010 is unjust, unwarranted, excessive and in violation of the Agreement (Carrier's File MW-ROAN-10-17-SG-115).
2. As a consequence of the violation referenced in Part 1 above, Mr. Jefcoat shall be granted the remedy in accordance with Rule 30(d) of the Agreement."

Upon the whole record and all the evidence, after hearing, the Board finds 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 precedent in any other case.

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 Claimant entered service for the Carrier on July 18, 2005 and had seniority in the position of laborer during the events that lead to this case. The Claimant was returning to service for the Carrier after being called up for service by the military reserve. After returning from his most recent active duty tour, the Claimant happened to engage Supervisor M. Wolfe in a conversation. During the course of that conversation, the Claimant mentioned that he sprained his shoulder, his Achilles tendon, and had suffered from post-traumatic stress disorder as a result of his tour (Transcript page 7). Supervisor Wolfe indicated to the Claimant at that time that he needed to get a Return to

Work physical before returning to work. The Carrier requires the Return to Work procedure for employees who have a 90 day or larger lapse since they last worked for the Carrier.

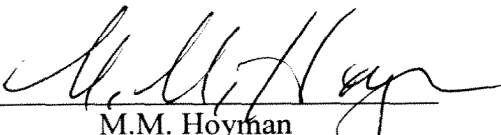

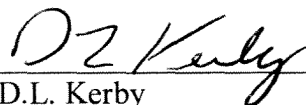
As a routine part of the Return to Work medical procedure, the Claimant had to fill out form MED-15. The form specifically asks questions about a variety of medical conditions including painful joints, mental conditions, and any other medical condition. The claimant did not indicate he had any of the conditions he talked about with Supervisor Wolfe on the form. In addition, the Claimant signed the form which included a statement that by signing he certified that his answers were true to the best of his knowledge. The Claimant was dismissed from service on April 30, 2010 for falsifying information on January 11, 2010 when he filled out form MED-15.

The Carrier notes the testimony in the record showing that the Claimant was well aware of his condition. It also cites the MED-15 form itself, which clearly shows the Claimant failed to document his known conditions. The Carrier makes an argument that any dishonesty is a serious offense and offers a series of cases which supported dismissal for dishonesty even in the absence of no other disciplinary actions consistent with progressive discipline (see PLB 3445 Award 39, BMWED v. NSR - Zumas; SBA1048, Award 179 BMWED v. NSR - Malin; 3 NRAB Award 20507 BMWED v. NW - Frandon; 3 NRAB Award 5459 AFL-CIO v. NYC - Zumas; and PLB 3445 Award 72, BMWED vs. S.R. - Zumas).

The Organization claims that the Claimant's responses on form MED-15 are simply a misunderstanding. According to the Organization, the Claimant at the time when he was filling out the form thought it was asking him if he was currently suffering from any of the conditions listed. At the time, the Claimant genuinely felt that the issues he described to Supervisor Wolfe were not impacting him. In support of this, the Organization notes that during his physical exam the Claimant was not bothered by any of the stretches (Transcript page 27).

In coming to its conclusion, the Board has reviewed the case record carefully. The Board is in agreement with the Carrier and the spirit of its cited cases that intentional dishonesty is a severe offense and is enough to warrant dismissal in and of itself. However, while the facts support that the Claimant was obviously negligent in filling out the form, his actions do not appear to constitute intentional dishonesty. In this case, the punishment of dismissal is excessive given the circumstances surrounding the infraction. For these reasons, the Claimant shall be reinstated to service and retain all seniority, but without back pay. This reinstatement is contingent on the Claimant passing the Return to Work physical exam.

The claim is sustained in part.


M.M. Hoyman
Chairperson and Neutral Member
T. Kreke
Employee Member
D.L. Kerby
Carrier Member

Issued at Chapel Hill, North Carolina on February 10, 2012.