

dismissal was arbitrary, capricious or excessive.

The claim is denied.

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 103

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of F. G. Brewer 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 September 6, 2000, for failure to follow instructions to take a medical examination on May 19, 2000.

(Carrier File MW-BLUE-00-08-LM-174)

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 establishes that Carrier proved the charge by substantial evidence. The record reflects that Claimant was instructed to take a medical examination on May 19, 2000. It further indicates that Claimant acknowledged the Division Engineer's instructions to meet the Assistant Division Engineer at 6:00 a.m. at Bluefield on May 19, 2000, to be transported to Pittsburgh for the medical examination, and acknowledged that he was physically able to attend the exam. Although Claimant did indicate that he was not sure that he could arrange a baby sitter so that his wife could accompany him to the exam, the record reflects that Claimant did not advise the Division Engineer or the Assistant Division Engineer that he would not appear on May 19, but simply failed to appear. Although Claimant testified that he did so