

**SPECIAL BOARD OF ADJUSTMENT NO. 1048**

**AWARD NO. 131**

Parties to Dispute:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES**

**AND**

**NORFOLK SOUTHERN RAILWAY COMPANY**

Statement of Claim:

Claim in behalf of C. E. Smith for reinstatement to service with seniority, vacation and all other rights unimpaired and pay for time lost as a result of his dismissal from service following a formal investigation held on January 13, 2003, in connection with his violation for Rule N for failure to properly report a personal injury that allegedly occurred on October 28, 2002, and making false and conflicting statements in connection with this alleged injury.

(Carrier File MW-DECR-02-46-LM-336)

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**

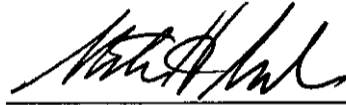
After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The record contains substantial evidence that Claimant failed to properly report the injury and violated Rule N. Claimant testified that he realized he had injured himself on October 28, 2002, and that he did not report it because he wanted to keep his and the gang's safety record clean.

However, Carrier did not prove by substantial evidence that Claimant falsified the injury report that he filed on November 19, 2002. Claimant was throwing plates on October 28. There is no dispute that after he returned to the motel, he experienced such pain in his leg that three coworkers had to help him leave the motel and get into his car. Although two of the coworkers speculated that Claimant may have been experiencing blood pressure problems or a heart attack, they had no medical training and their speculations are not substantial evidence that Claimant did not injure himself on duty that day. A third coworker testified that Claimant complained to him of pain in his leg while he was throwing plates that day. Claimant testified that he experienced some pain while throwing plates and that the pain became severe at the motel. Given the state of the record, we are unable to say that Carrier proved by substantial

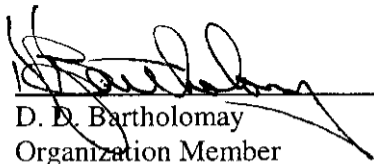
evidence that Claimant falsified the injury report.

Claimant had 20 years of service and the Track Supervisor testified that he was an excellent employee. Considering all of the circumstances, we hold that the Rule N violation that Carrier proved does not justify the penalty of dismissal. Claimant shall be reinstated to service with seniority unimpaired but without compensation for time held out of service.



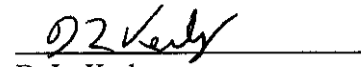
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M. H. Malin  
Chairman and Neutral Member



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D. D. Bartholomay  
Organization Member



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D. L. Kerby  
Carrier Member

Issued at Chicago, Illinois on September 29, 2004