

SPECIAL BOARD OF ADJUSTMENT 1048

CASE NO. 153

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier's File: MW-DEAR-06-21-LM-116)

Statement of Claim:

Claim on behalf of W. L. Taylor for reinstatement to service with seniority, vacation and all other rights unimpaired and pay for lost time as a result from his dismissal from service following a formal investigation held on June 6, 2006, in connection with his being absent without permission and failure to protect his assignment between March 17 through March 24, 2006.

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

W. L. Taylor, the Claimant herein, entered the Carriers' service on June 3, 1977 as a Trackman, and at all relevant times associated with this case, he was assigned as a Section Laborer on the Dearborn Division. Following a formal investigation held on June 6, 2006, it was determined that the Claimant was, in fact, absent without permission on March 17th and March 24th, 2006, and thereby failed to protect his assignment. Based on these facts, together with the fact that the Claimant had

been given a verbal warning on January 30, 2006, it was determined that the Claimant's termination was an appropriate response to his actions. The Claimant was so informed by letter dated June 23, 2006. The Organization took exception to the discipline assessed, and the instant claim for review ensued.

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 hearing, the Carrier sustained its burden of proof by establishing, through substantive credible evidence, that the Claimant's actions violated Rule GR-6, which provides as follows:

Employees must report for duty at the designated time and place. They must be alert and attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty exchange duties, or substitute others in their place without proper authority.

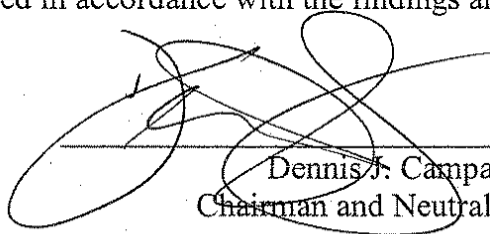
Turning now to the discipline sought to be imposed, the Board finds unique and extraordinary circumstances that must be considered. In this regard, the record evidence reveals that the Claimant provided dedicated and continuous service to the Carrier since 1977. The record evidence also established that at the time of his absence, the Claimant had been removed from his place of residence as following a dispute with his wife. As a direct result of the Claimant's marital problem, his wife obtained a restraining order that prohibited the Claimant from entering the property. The record shows that when the Claimant violated this protective order, he was arrested and incarcerated. The Claimant's incarceration accounted for his absences at issue in this proceeding. The record also shows that the Claimant notified the Carrier on March 16, 2006, on March 21, 2006 and on March 28, 2006, informing them that he was having marital problems, and as a result, would not report for work. The record also shows that during this period of time, the Claimant was suffering from an alcohol addiction, exasperated by his marital difficulties. Finally, the record shows that the

Claimant voluntarily entered an inpatient treatment program at Behavioral Health of the Palm Beaches on April 21, 2006, and following his successful release from that program, the Claimant contacted the Carrier's Drug and Alcohol Rehabilitation Services ("DARS") program, where he sought counsel from the DARS counselors.

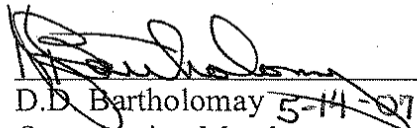
Given the foregoing unique facts and circumstances in this matter, and without setting a precedent for future cases, the Board finds that a more fitting and appropriate discipline is the Claimant's reinstatement to service without back pay, a "last chance" to demonstrate that he is a productive, law abiding employee who is capable of following the Carrier's Rules. As a precondition of his reinstatement, the Claimant shall be required to remain in compliance with all conditions, restrictions and other terms of the Carrier's DARS program. In this regard, the Claimant shall be obligated to sign any and all necessary releases in order to allow the Carrier to monitor the Claimant's compliance with the DARS program. Finally, the Claimant is hereby advised that his failure to comply with all DARS requirements shall provide grounds for his immediate removal from service.

CONCLUSION

The Claim is sustained in accordance with the findings and conclusions noted and discussed above.



Dennis J. Campagna
Chairman and Neutral Member



D.D. Bartholomay 5-14-07
Organization Member



D.L. Kerby
Carrier Member

Dated April 27, 2007, Buffalo, New York