

SPECIAL BOARD OF ADJUSTMENT 1048

CASE NO. 155

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier's File: MW-ROAN-06-21-SG-351)

Statement of Claim:

Organization's claim on behalf of W. T. Montgomery for reinstatement to service after his dismissal following a formal investigation on August 3, 2006, concerning his failure to protect his job assignment and his excessive absenteeism.

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. T. Montgomery, the Claimant herein, entered the Carrier's service on July 11, 2005 as a Laborer. The instant matter concerns the propriety of the Carrier's decision to dismiss the Claimant for his failure to protect his assignment and for his excessive absenteeism. The record reflects that the Claimant failed to report for duty, generally on a "no call, no show" basis, without notifying his supervisor, on a total of 39 days during the period covering January through July, 2006.

DISCUSSION

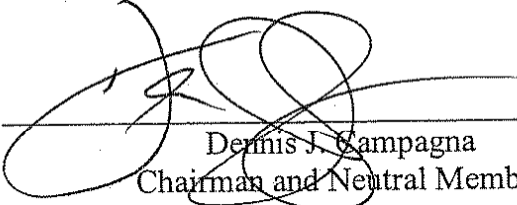
Initially, this Board notes that it sits as a reviewing body and does not engage in making *de novo* findings. Accordingly, we must accept those findings made by the Carrier on the Property, including determinations of credibility, provided they bear a rational relationship to the record.

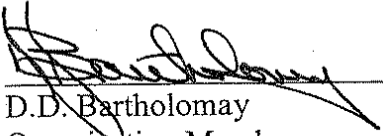
At the investigation, the Carrier sustained its burden of proof by establishing, through substantive credible evidence, that beginning January 2006 and continuing through the first seven months of 2006, the Claimant was absent or tardy a total of 39 times. The record also reflects that on numerous occasions, the Claimant made no attempt to contact the Carrier of his absence. On those other occasions when the Claimant did call, he made no attempt to explain his absence and only sought to comment that he would not be reporting for duty, or that he would be reporting, albeit late. On one occasion, the Claimant called in to report that he would be coming to work late, but he never showed. Finally, the record also reflects that this is not a case where the Carrier rushed to judgment seeking an early dismissal of the Claimant's employment. In fact, the record demonstrates that on April 24, 2006, Material Yard Manager M. A. Wolfe attempted to educate the Claimant on the importance of coming to work, in a timely fashion by counseling the Claimant in this regard. Regretfully, the Claimant failed to improve his attendance.

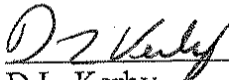
At the investigation held on August 3, 2006, the Claimant offered no explanation to counter the Carrier's assertion that he failed to protect his assignment and that he engaged in excessive absenteeism. The Claimant did, however, acknowledge that the Carrier's payroll records reflecting his numerous instances of tardiness or absence were accurate. The Claimant also acknowledged that he understood his obligation to report to work promptly by 7:00 a.m. daily as well as the obligation to call in in a timely fashion on those occasions where he would not be able to report for work at 7:00 a.m., or where he would be absent for the day. Governing from the Claimant's abysmal attendance record however, it is clear that he failed to practice what he understood his obligations to be. Given these undeniable facts, together with the Claimant's short tenure with the Carrier, this Board cannot find the Carrier's action in dismissing the Claimant to have been unreasonable, arbitrary or capricious. Accordingly, the claim must be denied.

CONCLUSION

The Claim is denied.


Dennis J. Campagna
Chairman and Neutral Member


D.D. Bartholomay
Organization Member


D.L. Kerby
Carrier Member

Dated June 30, 2007, Buffalo, New York