

SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 179

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of J. D. Throne for reinstatement and compensation for all loss as a result of a dismissal from service following a formal investigation held on November 12, 2008, in connection with conduct unbecoming an employee, violation of Norfolk Southern Operating Rule U and violation of Federal Motor Carrier Safety Regulations in that he submitted a falsified Medical Examiner's Certificate of Qualification and drove a Company vehicle after failing to pass his medical examination that was required to renew his Commercial Driver's License.

(Carrier File MW-CHAR-08-07)

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 facts are not in dispute. Claimant was a Roadway Machine Repairman who operated a Carrier vehicle which required a commercial driver's license (CDL). Federal regulations require that any individual with a CDL pass a physical every two years. On October 8, 2008, Carrier sent Claimant for his mandatory CDL physical. Claimant did not pass the physical because he was taking insulin. Nevertheless, Claimant forged a doctor's signature on a medical certification card and gave it to his supervisor.

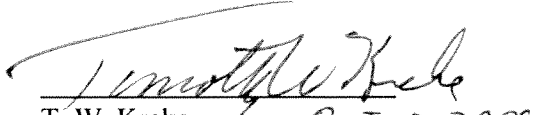
At the investigation, Claimant admitted the violation but stated that he panicked because he was worried how he would support his family if he lost his job. Of course, if Claimant had truthfully advised Carrier that he had failed the physical he could have exercised seniority to another position which did not require a CDL. Instead, Claimant aggravated the violation by driving his assigned vehicle knowing that he was

no longer medically cleared to do so. In so doing, Claimant endangered the safety of himself and others. The Agreement does not require to keep such an individual in its employ. The claim is denied.



M. H. Malin

Chairman and Neutral Member



T. W. Kreke
Organization Member

OCT. 5, 2009



D. L. Kerby

Carrier Member

Issued at Chicago, Illinois on September 24, 2009.