

SPECIAL BOARD OF ADJUSTMENT NO. 1048

Award NO. 94

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

Norfolk Southern Railway

STATEMENT OF CLAIM:

Claim on behalf of K. R. Daniels 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 February 26, 1999, for failure to properly report an alleged on-duty injury on August 19, 1998, falsification of an alleged on-duty injury on August 19, 1998 and failure to follow instructions to fill out an incident report in connection with such alleged injury.

(Carrier File MW-HSNC-98-24-SG-406)

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:

Claimant was dismissed for failing to properly report an alleged on-duty injury, falsifying such injury and refusing to complete required Form 22 in connection with the injury. The record reveals that the alleged on-duty injury occurred on August 19, 1998, but that Claimant did not report it until September 1, 1998, and, at that time, he refused to complete a Form 22. The record contains substantial evidence of Claimant's guilty of the offenses with which he was charged.

However, considering all of the facts and circumstances of this case, including several mitigating factors, the Board finds that dismissal is an excessive penalty. Accordingly, Carrier is ordered to reinstate Claimant to service with seniority and benefits unimpaired, but without compensation for time held out of service.


M. H. Malin
R. A. Lau
Organization Member
D. L. Kerby
Carrier Member

Issued at Chicago, IL on December 21, 1999