

SPECIAL BOARD OF ADJUSTMENT NO. 1049

Award NO. 111

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

Norfolk Southern Railway

STATEMENT OF CLAIM:

Claim on behalf of A. J. Groleau 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 March 12, 1999, for failure to report alleged on-duty injuries on October 4, 1996 and January 7, 1998 and for falsification of such alleged injuries.

(Carrier File MW-GNVL-99-1-LM-13)

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:

The record reveals that Carrier twice unilaterally postponed the hearing in this matter. The proper practice, and the one usually practiced on the property, is to seek the concurrence of the Organization in such postponements. The Board is troubled by Carrier's actions in the instant case, although there appears to have been no actual prejudice and it is not the basis for our decision. Nevertheless, we caution that Carrier should not be so dismissive of the need to consult with the

Organization regarding postponements.

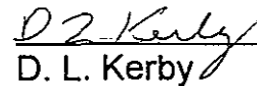
Claimant was dismissed for failing to properly report alleged on-duty injuries of October 4, 1996, and January 7, 1998, and for falsification of such alleged injuries. Our review of the record convinces us that Carrier proved the charges by substantial evidence. However, considering all of the surrounding circumstances, including the circumstances that led to Claimant's failure to report the injuries and Claimant's length of service, we conclude that dismissal is an excessive penalty. Accordingly, Carrier shall reinstate Claimant to service with seniority and benefits unimpaired, but with no compensation for time out of service.



M. H. Malin



R. A. Lau
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, IL on December 22, 1999