

SPECIAL BOARD OF ADJUSTMENT NO. 1049

Award NO. 114

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

Norfolk Southern Railway

STATEMENT OF CLAIM:

Claim on behalf of R. G. Kolb requesting reinstatement with seniority, vacation and all other rights unimpaired and pay for time lost, as a result of his dismissal from service following formal investigation held on June 1, 1999, for his responsibility in connection with violating Norfolk Southern Safety and General Conduct Rule N and making false statements concerning an alleged March 30, 1999 on-duty injury.

(Carrier File MW-SOMS-99-03-LM-97)

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 and for falsifying that injury. The record reveals that Claimant alleged he was injured on duty on March 30, 1999, but he did not report the alleged injury until April 23, 1999. Moreover, the record further reveals substantial evidence that, when he did report the alleged on-duty injury, the report was false. Thus, we find that Carrier proved the violations with which Claimant was charged.

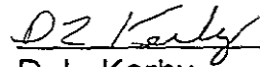
We further find that the violations were aggravated. The medical reports reflected that Claimant suffered from osteoporosis and arthritis, rather than a discrete on-duty injury to his back. Moreover, Claimant did not claim to have injured his back while on duty until after he had exhausted his vacation days and was to undergo continuing treatment for back problems. Under these circumstances, we cannot say that dismissal was arbitrary, capricious or excessive. Therefore, the claim is denied.



M. H. Malin



R. A. Lau
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, IL on December 22, 1999