

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 132

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of L. A. Rodgers for reinstatement to service with seniority, vacation and all other rights unimpaired and pay for time lost as a result of his dismissal from service following a formal investigation held on June 26, 2002, in connection with his conduct unbecoming an employee for unauthorized use of a Company phone card for personal business.

(File MW-BHAM-02-06-LM-124)

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 reflects that from the period January 2001 to May 2002, more than 850 unauthorized calls were made on Carrier telephone calling cards that were issued to Claimant and were restricted to use for company business. The calls were made by one of two methods: either by dialing an NS 800 number, followed by the destination number, followed by a 14-digit authorization code, or by following the directions printed on the calling card and dialing 1-800-CALLATT, the destination number and the access code.

On June 4, 2002, the Division Engineer confronted Claimant with the records of calls made on his calling cards for the NS 800 and the CALLATT methods for January - April 2002 and the NS 800 for August 2001. Claimant stated that he always used the NS 800 method and did not know who made the calls using the CALLATT method. He identified some of the calls on the NS 800 bills as calls to his home (which the Division Engineer testified he considered to be authorized company calls), to a cousin in Lumberton, Mississippi, and to a friend in Jackson, Alabama. On June 5, 2002, Claimant and the Division Engineer spoke by telephone. Claimant advised that his son admitted making the calls on the CALLATT bills, and Claimant acknowledged making a number of calls on the NS 800 bills to family and friends. The Division Engineers faxed Claimant the telephone records for all of 2001, December 2000

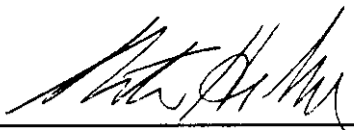
and January - April 2002. Claimant marked the personal calls that he acknowledged making as well as calls to numbers that he did not recognize. Claimant faxed those to the Division Engineer. On June 10, 2002, Claimant was dismissed as an Assistant Track Supervisor and on June 14, 2002, he was sent a notice of investigation.

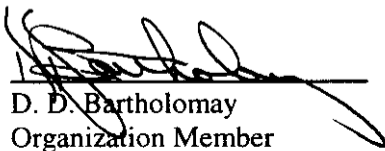
At the investigation, Claimant told a different story. Claimant attributed all of the unauthorized calls to his son. Claimant maintained that after his dismissal as Assistant Track Supervisor he again confronted his son who confessed to making the NS 800 calls as well as the CALLATT calls. He suggested that his son obtained the NS 800 number after Claimant used it from his home phone by pressing the caller-i-d. button and obtaining the number from a display on the phone. Claimant also stated that he had mistakenly marked some calls as personal that were in fact business, and specifically identified two calls to the Track Supervisor.

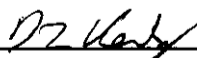
When asked why he acknowledged making personal calls that he was denying he made, Claimant stated that he thought that by acknowledging those calls, he would be required to make restitution but would be able to keep his job. He explained, "I felt that it was the lesser of two evils. It was I either admit to making the calls or I say I don't anything or have any recollection or don't know who made the calls. And I hope with coming forth and having to investigating coming forth and just being honest and admitting to the calls, I felt that would work in my favor. I felt that if I'd at least admitted to the calls, that had to amount to something."

Thus, the record presents that Claimant acknowledged making numerous unauthorized personal calls that he subsequently denied making because he felt that by falsely admitting to making the calls he could save his job. Of course, that did not save his job. Claimant was dismissed as Assistant Track Supervisor and noticed for an investigation. Thus, when the first strategy to save his job did not work, Claimant changed his story and attributed all of the unauthorized calls to his son, in a renewed effort to save his job. Not surprisingly, Carrier did not find Claimant's explanations credible. Considering the entire record, we see no reason to deny the credibility determinations made on the property the deference to which they are usually entitled. Accordingly, we find that Carrier proved the charge by substantial evidence.

We acknowledge that at the time of the incident, Claimant had approximately fourteen years of service. However, Carrier proved deliberate, active and continuous dishonesty on Claimant's part. Considering the severity of the offense and all of the surrounding circumstances, we cannot say that the penalty of dismissal was arbitrary, capricious or excessive. The claim is denied.



M. H. Malin
Chairman and Neutral Member

D. D. Bartholomay
Organization Member

D. L. Kerby
Carrier Member