

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 134

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of W. G. Davis 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 August 13, 2002, in connection with his marking off work under false pretenses on July 15, 2002.

(File MW-BHAM-02-09-LM-171)

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.

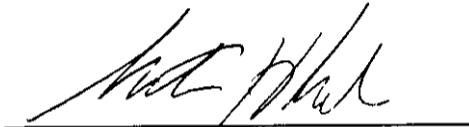
This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

AWARD

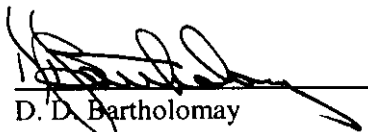
After thoroughly reviewing and considering the transcript and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The record reflects that on July 15, 2002, while in police custody after having been arrested on a charge of domestic violence, Claimant called Carrier and requested to mark off on vacation, stating that he was needed to care for his aunt who had had a stroke. Accordingly, we find that Carrier proved the charge of marking off under false pretenses by substantial evidence.

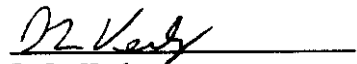
The record further reflects that Claimant had thirty-one years of service at the time of the incident. There is no evidence in the record of any prior discipline. Considering all of the facts and circumstances, we find that the penalty of dismissal was excessive. Carrier shall reinstate Claimant to service with seniority unimpaired but without compensation for time held out of service.



M. H. Malin
Chairman and Neutral Member



D. D. Bartholomay
Organization Member



D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on December 29, 2003