

SPECIAL BOARD OF ADJUSTMENT 1049

CASE NO. 178

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier's File: MW-GNVL-06-14-SG-258)

Statement of Claim:

Claim on behalf of S. H. Nitzschke, II for reinstatement to service 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 July 18, 2007, in connection with his violation of Norfolk Southern Safety and General Conduct Rule, GR-12, concerning having a firearm in his possession on Company property while occupying Carrier provided camp car facilities on June 20, 2007.

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' presentation, the Board finds that the claim should be disposed of as follows:

BACKGROUND

S. H. Nitzschke, II, the Claimant herein, entered the Carrier's service on April 15, 2007 as a Laborer.

The instant matter concerns the propriety of the Carrier's decision to dismiss the Claimant for his possession of a firearm in the Company provided camp car while working his regular assignment on

Timber and Surfacing Gang TS-2, a traveling crew that was lodged in Carrier provided camp cars parked in the vicinity of the work location.

DISCUSSION

Initially, this Board notes that it sits as a reviewing body and does not engage in making *de novo* findings. Accordingly, we must accept those findings made by the Carrier on the Property, including determinations of credibility, provided they bear a rational relationship to the record.

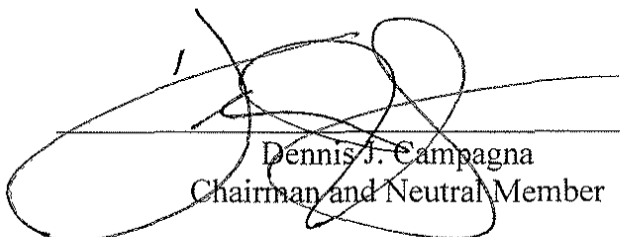
At the investigation, the Carrier sustained its burden of proof by establishing, through substantive credible evidence, that the Claimant took a handgun from under his pillow on his camp car bunk, tucked it into the waist of his pants where it was concealed walked to the other end of the camp car, engaged in a somewhat agitated verbal exchange with co-workers. The exchange was prompted by the Claimant's comments about "stepping outside" to settle matters during which the Claimant stated, in words of substance, that "one does not bring knives to a gun fight." The Claimant then replaced his handgun under the pillow on his bunk. Two co-workers credibly testified seeing a gun in the Claimant's possession and other co-workers credibly testified that they heard the Claimant make remarks that implied that he had a gun. Given that the Carrier has carried its burden of proof, there remains a question of the appropriate penalty.

Safety and General Conduct Rule GR-12 expressly prohibits the possession of a firearm on Company property or while occupying Company provided vehicles. The record evidence confirms that the Claimant was well aware of this Rule as well as the rationale for banning gun possession on the property. This Rule was specifically designed as part of the Carrier's commitment to provide a safe work environment for its employees. Indeed, in our society the carrying of a concealed weapon poses the potential threat of a fatal injury where a volatile dispute might arise among two or more employees. Simply put, there is simply no excuse for the Claimant to have possessed a weapon while on Company property.

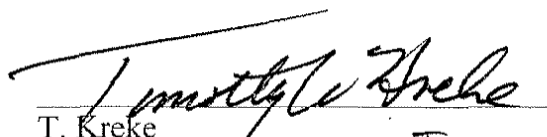
Given these undeniable facts, together with the Claimant's short tenure with the Carrier, this Board cannot find the Carrier's action in dismissing the Claimant to have been unreasonable, arbitrary or capricious. Accordingly, the claim must be denied.

CONCLUSION

The Claim is denied.

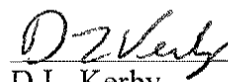


Dennis J. Campagna
Chairman and Neutral Member



T. Kreke
Organization Member

June 27, 2008



D.L. Kerby
Carrier Member

Dated May 31, 2008