

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 184

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of T. G. Johnson requesting that he be made whole and returned to service with pay for all time lost with seniority, vacation unimpaired as a result of his dismissal from service following a formal investigation held on November 29, 2007, for his responsibility in providing false information to his supervisor regarding his absence from February 12 through March 13, 2007, and his conduct unbecoming an employee related to his plea of guilty for possession of illegal drugs and drug paraphernalia, in violation of Norfolk Southern Policy on Alcohol and Drugs.

(Carrier File MW-CN-07-05-SG-116)

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.


AWARD

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

The record reflects that Claimant was absent from February 12 - March 13, 2007. Claimant's supervisor testified that Claimant explained that his absence was due to incarceration for a parole or probation violation concerning a dispute with his ex-wife concerning his failure to make support payments. The record further reflects that Claimant was arrested on February 9 for reckless driving and was charged with reckless driving and illegal possession of drugs and a firearm. Claimant testified that his February 9 arrest was independent of his February 12 incarceration. According to Claimant, he was arrested on February 9 in Tennessee but his February 12 incarceration arose when he reported to his probation officer in Georgia and was arrested for probation violation. Carrier did not credit Claimant's testimony and its failure to credit Claimant's testimony certainly was reasonable. Claimant offered no documentation to support his story and, if in fact he was incarcerated in Georgia on a probation violation, such documentation would have been available. Furthermore, Claimant offered no documentation showing the date of his release from jail in Tennessee. Of course, Claimant would certainly have a motive to attempt to hide his drug arrests and conviction on such charges as they would subject him to dismissal under Carrier's Drug and Alcohol Policy. We conclude that Carrier proved the charge of providing false information by substantial evidence.

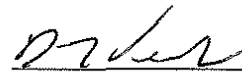
The Organization contends that Carrier also found Claimant guilty of conduct unbecoming an employee based on his conviction of misdemeanor drug possession and possession of drug paraphernalia and objects that Claimant's convictions post-dated the notice of charges and were outside the scope of the

notice. We need not address this issue. Claimant's dishonesty in providing false information is alone a dismissible offense. Claimant's tenure was short term (just over two years) and the record reflects no mitigating factors. We conclude that the discipline imposed was not arbitrary, capricious or excessive. Accordingly, the claim is denied.



M. H. Malin

Chairman and Neutral Member


12-17-08T. W. Kreke
Organization Member
12-17-08D. L. Kerby
Carrier Member

Issued at Chicago, Illinois on November 30, 2008