

SPECIAL BOARD OF ADJUSTMENT NO. 1049

AWARD NO. 186

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

Statement of Claim:

Claim on behalf of M. J. Williams for reinstatement 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 December 19, 2007, concerning conduct unbecoming an employee for making false and conflicting statements in connection with an alleged on-duty injury.

(Carrier File MW-ATLA-08-01-LM-043)

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

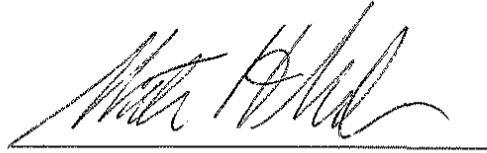
After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The record reflects that for most of the month of May, Claimant's gang was working in Fargo, Georgia while a forest fire burned in the area. Because of the fire, the employees were exposed to smoke which varied in intensity depending on the direction of the wind on any given day. There was evidence that on one day in particular, when authorities had set a back fire, the smoke exposure was particularly severe. Carrier employed an industrial hygienist contractor who monitored the levels of particulates in the air to ensure that the environment was safe for work. Carrier also distributed masks for the employees to use while working.

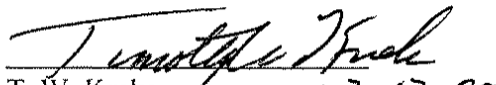
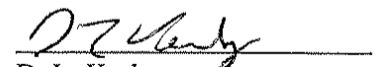
On June 15, 2007, Claimant went to the doctor who, apparently, diagnosed Claimant with laryngitis. Claimant testified that he could not read the doctor's report and that he believed the doctor gave him a diagnosis of bronchitis. Claimant submitted the doctor's report to Carrier's Claims Department for payment. When the Claims Manager contacted the Track Supervisor for additional information, it became apparent that Claimant had never completed an on-duty injury report on Form 22.

Rule N required Claimant to report his on-duty injury prior to leaving the premises and to promptly notify his supervisor when obtaining medical attention for any on-duty injury. Claimant never notified his supervisor and, even after the Claims Department notified Claimant's supervisor, Claimant refused to complete an on-duty injury report. There is no question that Claimant violated Rule N and, in so doing, engaged in conduct unbecoming an employee.

However, the record does not establish by substantial evidence that Claimant intended to defraud Carrier or that he otherwise submitted his medical claim other than in good faith. Claimant testified without contradiction that he could not read the doctor's report and that he believed he had been diagnosed with bronchitis. Moreover, another Machine Operator who worked with Claimant testified that Claimant had difficulty breathing and coughed up blood during the period in question. Considering the absence of evidence of fraudulent intent and Claimant's 36 years of service at the time of the incident we award that Carrier reinstate Claimant to service but without compensation for time out of service.



M. H. Malin
Chairman and Neutral Member


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

Issued at Chicago, Illinois on November 30, 2008