

NATIONAL MEDIATION BOARD

SPECIAL BOARD OF ADJUSTMENT NO. 1049

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES)	
DIVISION - IBT RAIL CONFERENCE)	Case No. 199
and)	
)	Award No. 199
NORFOLK SOUTHERN RAILWAY COMPANY)	
)	

Richard K. Hanft, Chairman & Neutral Member
T. W. Kreke, Employee Member
D. L. Kerby, Carrier Member

Hearing Date: February 25, 2010

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Claimant Gary A. Uppencamp for the alleged violation of Norfolk Southern Safety and General Conduct Rule GR6, failure to protect your assignment and excessive absenteeism in that you did not report for duty on, Monday, June 8, 2009 and Tuesday, June 9, 2009, is harsh, excessive, arbitrary and capricious and in violation of the Agreement (Carrier's File MW-DECR-08-19A-LM-331).
2. The dismissal of Claimant Gary A. Uppencamp in connection with conduct unbecoming of an employee for the alleged violation of the Carrier's Policy on Alcohol and Drugs concerning off the job drug activity, is harsh, excessive, arbitrary and capricious and in violation of the Agreement. (Carrier's File MW-DECR-08-19B-LM-331).
3. As a consequence of the unjust dismissal(s) described in Part 1 and 2 above, Mr. Uppencamp shall be made whole and restored to the service of the Carrier, with pay for all lost time, seniority and vacation unimpaired."

Upon the whole record and all of 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.

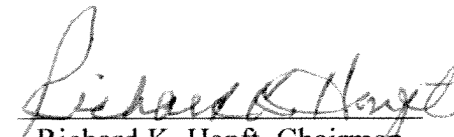
This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any future case.

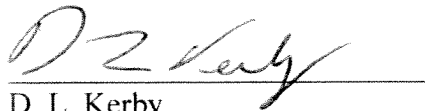
AWARD:

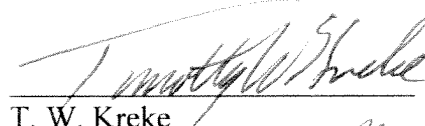
After thoroughly reviewing and considering the record and the parties' presentations, the Board finds that the claim should be disposed of as follows:

The record in this case supports the charges. However, based on the particular circumstances involved, the Board will afford Claimant one last chance to secure his job back through satisfying the rehabilitation services required by DARS. Claimant is directed to present himself to Carrier's DARS counselor within thirty days of this Award and commence participation in the prescribed program.

If Claimant timely re-enters the program, subsequently completes any rehabilitation required by DARS and then provides the necessary sample free of prohibited substances, his full seniority and benefits shall be restored. If he then satisfies the requisite return to work physical, he shall be reinstated to service but without compensation for time lost while out of service. If Claimant fails to present himself to DARS as directed above, or fails to complete any rehabilitation required by DARS, his dismissal as the result of the March 12, 2009 and April 30, 2009 investigations shall not be disturbed.


Richard K. Hanft, Chairman


D. L. Kerby
Carrier Member


T. W. Kreke
Employee Member

May 10, 2010

Dated at Chicago, Illinois, April 2, 2010