

SPECIAL BOARD OF ADJUSTMENT

NO. 1063

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-VS-

NORFOLK SOUTHERN CORP.
(N&W RAILWAY COMPANY)

DOCKET NO. OE-TOLP-98-01

CASE NO. 267

CLAIMANT: K.M. Linkenbach

FOR THE CARRIER: R.J. Kuhn, Asst. Director, Labor Relations

FOR THE ORGANIZATION: S.D. Spagle, General Chairman, BLE

NEUTRAL: Dr. James R. McDonnell

PRESENTER FOR CARRIER: Jeremy Moore, Labor Relations

STATEMENT OF CLAIM

Claim of Lake Division Engineer K.M. Linkenbach for all lost time before his reinstatement to service, December 26, 1997 to February 25, 1998, after dismissal for conduct unbecoming an employee for false and/or conflicting statements as a witness in and during an investigation on December 5, 1997.

FINDINGS

Upon the whole record and all evidence after the August 25, 1998 hearing in the Carrier's office, Norfolk, Virginia, and study of post-hearing submissions received on or before August 25, 1998, the Board finds that the parties herein are carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and the subject matter.

DECISION

The Carrier has failed to carry its required burden of proof in the instant Claim.

This is too much a case of "he said, she said," evidence. The Board must have more conclusive evidence to uphold the Charge.

Credibility is stretched beyond reason here. Hallway conversations, assertions and denials are unacceptable evidence. The standards of proof must be held to a higher level than exhibits in the instant matter.

AWARD

Claim sustained. The Claimant shall be made whole for all lost wages and benefits within thirty (30) days of the date below.

Robert J. Kuhn - I dissent.
R.J. Kuhn, Asst. Director, Labor Relations

Stephen Spagle
S.D. Spagle, General Chairman, BLE

James R. McDonnell
Dr. James R. McDonnell
Neutral

September 3, 1998