

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332

Parties to Dispute:)
)
)

INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS)
)

-and-)
)

NORFOLK SOUTHERN RAILWAY)
COMPANY)
)

AWARD

Case No. 153

Claimant J. J. Horneman

STATEMENT OF CLAIM:

“Claim on behalf of Electrician J. J. Horneman to be returned to service and to be made whole after being dismissed by letter dated April 5, 2016.”

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

Carrier conducted a formal investigation on March 10, 2016, relative to the following charges:

“...conduct unbecoming an employee when, at approximately 6:15 AM on February 17, 2016, you provided a falsified doctor’s return-to-work slip dated February 11, 2016, to the Carrier excusing your absence from work for the date of February 10, 2016, while assigned as an electrician on the third shift (11:00 PM – 7:00 AM) at Conway Locomotive Shop, Conway, Pennsylvania.”

As a result of Carrier’s findings following the investigation, by letter of April 5, 2016 it advised Claimant Horneman that he was being dismissed from service. The Organization took exception to that action and has now progressed the dispute to this Board for final resolution when discussions between the parties in claim handling failed to settle the matter.

The underlying factual scenario before the Board is mildly unusual. The record indicates that the Claimant, hired by Carrier as an Electrician in late 2007, marked off on

February 10, 2016, complaining of sinus issues. At the time, his attendance record had been less than stellar, having earlier received a counseling letter for several instances of calling off on days abutting his assigned days off. February 10 was also a day adjacent to a rest day. Out of concern that he might possibly be disciplined for another such occasion, on February 17 he provided a written doctor's excuse and return-to-work slip dated February 11 for missed day on February 10, even though not formally directed to do so. Because the physician's slip bore no signature, in the course of verifying it Carrier officials correctly determined that it had been falsified. During the timeframe at issue, Claimant had just been informed by his spouse that she would be seeking a separation, which he indicates had resulted in a great deal of family stress.

This record reflects no disagreement on the importance of the fundamental principles and values that Norfolk Southern stresses with its employees. It expects that they at all times conduct themselves honestly and forthrightly with their managers. Its well publicized Safety and General Conduct Rules, with which Claimant was familiar, emphasize at the outset the need for employees to act honestly and courteously in discharging their duties. Nor does Claimant, whose service record is otherwise satisfactory, make any excuse for the seriousness of his actions in dissembling, readily conceding that it was mindless on his part to attempt to manufacture a doctor's note:

"After having my wife ask for a separation and getting a counseling letter for calling off adjacent to my rest days which was the 10th...for some reason I thought if I create a doctor's excuse it would avoid any additional stress with discipline for absenteeism. I can't understand now why I thought it would be a good idea to do this. I'm extremely sorry and regret that decision..."

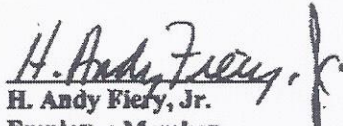
There is sadness aplenty in Claimant's formal written apology, reflecting a long course of treatment for stress issues, culminating in marriage problems in mid-February threatening the loss of two small children and exacerbating his depressed condition. After experiencing sinus problems following report to work at 11:00 p.m. on February 10, he advised his supervisor at 2:30 a.m. on February 11 that he was marking off sick and went home. When advised the next day that the earliest his doctor could accommodate his request for an appointment was February 12, and told by the physician that, "I don't write


excuses for dates I don't see you in the office," he decided to create a written excuse to avoid any further stress related to discipline for absenteeism. "...I do not have a history of trouble," the Claimant says. "I would do anything to be able to take back that decision."

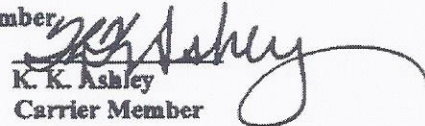
Claimant has now been out of service for approximately six (6) months. Upon review of the record in its entirety, in light of the facts provided in this record and with proper account to Claimants prior service record, it would appear that the interests of all parties would be adequately served by a significant disciplinary suspension in lieu of dismissal. The Board will therefore direct Carrier to convert the dismissal to a suspension at the earliest possible time following receipt of this award, but not to exceed thirty (30) days thereafter. The Claimant's restoration to service will be without backpay or benefits, with all time missed considered time on disciplinary suspension.

A W A R D

The Claim is partially sustained in accordance with the Findings.


H. Andy Fiery, Jr.
Employee Member


James E. Conway
Chairman and Neutral Member


K. K. Ashley
Carrier Member

Dated: September 29, 2016