

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 5332

Parties to Dispute:	)	
	)	
INTERNATIONAL BROTHERHOOD OF	)	<u>AWARD</u>
ELECTRICAL WORKERS	)	
	)	Case No. 154
-and-	)	
	)	Claimant M. Kapala
NORFOLK SOUTHERN RAILWAY	)	
COMPANY	)	
	)	

STATEMENT OF CLAIM:

“Claim on behalf of Communications Electronics Technician M. Kapala to be reinstated to service and made whole after being dismissed by letter dated October 24, 2014.”

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.

Claimant Kapala, a 31-year former Communications Maintainer and, at the time of these events, a Communications Electronic Technician at Fort Wayne, Indiana, was dismissed from service effective October 14, 2014, after Carrier determined that he had viewed pornographic material on 19 separate occasions between May 20, 2013, and October 22, 2013, while at work and on his Company computer.

The record indicates that the activity in question first came to Carrier’s attention on August 7, 2014, when a Carrier Compliance Investigator determined that Claimant’s laptop held a temporary file containing pornographic pictures and videos. During an interview conducted by a Senior Compliance Investigator on August 27, 2014, Claimant openly admitted that he had viewed the inappropriate material. A formal investigation was conducted on October 7, 2014, in the course of which Claimant verbally acknowledged his viewing of pornographic material on the dates and at the times alleged. His written

statement here in evidence confirms those admissions. After considering the totality of the transcript and evidence adduced at the formal investigation, by letter dated October 24, 2014, Carrier's Hearing Officer advised Claimant that he was being dismissed from service.

After the Organization took exception to that action, and following progression of its claim on Mr. Kapala's behalf in the customary manner in discussions between the parties on the property, the unresolved dispute was ultimately submitted to this Board for final resolution.

The character and quality of Carrier's record evidence is beyond dispute. Norfolk Southern has clearly established that Claimant was responsible for conduct unbecoming a Company employee, as well as improper performance of duty for viewing the offensive material while in pay status. For his part, Claimant openly owns up to his misconduct, at the same time suggesting that he was not familiar with Carrier's Private Property Clause and denying his viewing interfered in any way with his job performance.

Notwithstanding his protests, Claimant reasonably must be assumed to have been well aware of the inappropriate nature of his conduct; he is a veteran employee and there is nothing vague or mysterious about the applicable rules and policies. Additionally, Carrier's computer systems play a significant role in its business communications, and it has every right to expect that those tools be used responsibly. Acting as counterbalance, however, the Claimant's prohibited conduct was entirely private; there is no evidence any of the sexually suggestive materials were shared with others in the workplace; Claimant was laudably open and forthcoming when confronted by Carrier authorities; and he has enjoyed up to these events a long and successful career with Carrier. If his 31 years of satisfactory service were ever to account for anything, it is exactly in such circumstances.

Based upon the Board's review of this record, we are forced to conclude that the discipline imposed was not commensurate with the offense. Accordingly, the claim will be partially sustained. Carrier will be directed to convert the discharge to a disciplinary suspension and Claimant will be reinstated to his prior position as soon as practicable, not to exceed thirty (30) days from date this Award is finalized. Restoration to service shall be without backpay or benefits, with time out of service considered disciplinary suspension. If

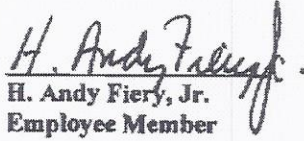
OPINION AND AWARD

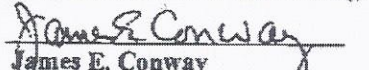
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Carrier determines that professional assistance by appropriate counseling is indicated, Claimant will be expected to return to service subject to such counseling.

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