

PUBLIC LAW BOARD NO. 1760

Award No. 111

Docket No. 111
N&W File MW-DEC-85-92

Parties Brotherhood of Maintenance of Way Employes
to and
Dispute Norfolk and Western Railway Company
 (Former Wabash)

Statement
of Claim: Claim on behalf of M. A. Brown requesting that he be
returned to service and paid for all time lost since August
9, 1988 when Claimant completed DARS program and was not
allowed to return to service after being dismissed for
insubordination as the result of a January 6, 1988
investigation.

Findings: The Board has jurisdiction of this case by reason of the
parties Agreement establishing this Board therefor.

Claimant Crane Operator, on September 17, 1987, was
working on rail gang R-3 near Paris, Missouri. As a result
of an incident occurring at approximately 7:00 AM he was
cited to an investigation charged with:

"being insubordinate...when you use profane language to your
immediate supervisor, H. A. Greenfield and General Division
Engineer K. M. Kamenski."

As a result of the investigation, Claimant was found
culpable and dismissed from service as discipline therefor.

Shortly thereafter Claimant entered Carrier's Drug and
Alcohol Rehabilitation Service (DARS) program which he
successfully completed. Claimant was not reinstated because
of the Carrier's policy that completion of Carrier's DARS
program does not give an employee dismissed for
insubordination any demand right to reinstatement to
service.

Claimant was accorded the due process to which entitled
under his discipline rule.

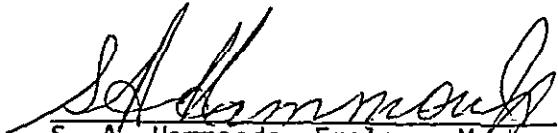
There was sufficient evidence to support the conclusion
reached by Carrier as to Claimant's culpability.

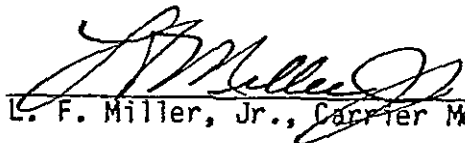
There are mitigating circumstances which cause the
Board to reinstate Claimant to service with all rights
unimpaired, but without pay for time out of service and to
place him in a probationary status for 6 months. This is
done without prejudice to Carrier's position that Claimant

has no right to be reinstated after completing the DARS program because of the circumstances prevailing in this case.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


S. A. Hammonds, Employee Member

 - DISSENTING TO
L. F. Miller, Jr., Carrier Member REINSTATEMENT


Arthur T. Van Wart, Chairman
and Neutral Member

Issued February 23, 1990.