

PUBLIC LAW BOARD NO. 1760

Award No. 114

Case No. 114  
Carrier File MW-DEC-86-43

Parties Brotherhood of Maintenance of Way Employees  
to and  
Dispute Norfolk and Western Railway Company

Statement  
of Claim: Terry Brown-30 days suspension for violation of Safety  
and General Conduct Rule GR-12 firearms.

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

Claimant, Machine Operator, failed to arrive at 7:00 AM  
to operate the Koehring crane. He did not arrive for work  
until approximately 1:00 PM, which was 6 hours after the  
scheduled starting time.

The Roadmaster learned that the reason for Claimant  
being late was because he spent the previous night in the  
local jail in Lafayette, Indiana. In the conversation with  
the local police, the Roadmaster was advised that Claimant  
was arrested at 1:00 AM and charged with Driving Under the  
Influence (DUI). The police also found firearms in  
Claimant's vehicle which vehicle Claimant used daily for  
transportation to the job site for company provided lodging  
at Days Inn, Lafayette.

The Roadmaster cited Claimant to attend a formal  
investigation to determine his violation of Rule GR-12 in  
having possession of firearms on company property and with  
failure to protect his assignment on June 12. As a result  
of the investigation Carrier concluded that Claimant was  
guilty and assessed the discipline here appealed.

Claimant was accorded the due process to which entitled  
under his discipline rule. His removal from service was not  
in violation thereof. Possession of guns either on the job  
site or in the Company leased hotel room would be construed  
to be in violation thereof. That is not a minor offense.  
The GR-12 rule is intended to discourage and deter employees  
from bringing guns to work in order to protect the safety of  
all other employees. Our Award No. 107 justifies the  
reasoning behind GR-12.

There was sufficient evidence to support and permit  
Carrier to make a conclusion that Claimant was culpable of  
the charges placed against him. DUI is not an unavoidable

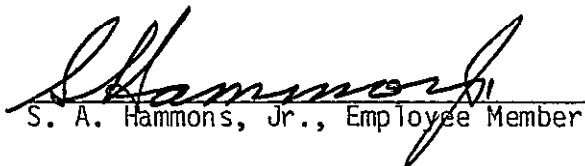
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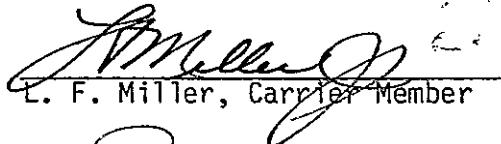
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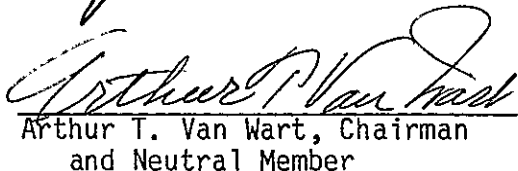
cause for detention from work. Nor, is having a fellow employee advise that another employee is going to be late concomitant with permission.

While the Board may not have reached the same conclusion, the fact remains that there was general knowledge on the employee grapevine that the Claimant was carrying weapons, or that he possessed weapons. Testimony showed that he was transporting himself to the job site in the same vehicle in which firearms were later found. Claimant's testimony reflected that he was being evasive in the necessary answers for reaching a direct conclusion. The evidence must be construed as being inferential or circumstantial. However, circumstantial evidence is entitled to the same weight as the direct evidence of a witness. Hence, Carrier as trier of the facts concludes from the evidence adduced that if there were firearms in the glove compartment of his car and also in his room, that he is guilty of possessing guns on Company property. The evidence supported that conclusion. This claim will be denied.

Award: Claim denied.

  
S. A. Hammons, Jr., Employee Member

  
L. F. Miller, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued September 27, 1990.