

PUBLIC LAW BOARD NO. 1760

Award No. 128

Case No. 128

Docket No. MW-DECR-90-52

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

Statement

of Claim: Claim of R. Williams for removal of thirty days' actual suspension assessed as a result of investigation held June 21, 1990, for insubordination.

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

The Carrier, on October 17, 1986, posted the following notice:

"To all concerned:

All employees are reminded that they will work during their regular assignment and be prepared to work if raining, etc., except when it is determined by the Foreman or supervisor in charge that the weather is inclement and work cannot be performed safely or productively. In such cases, the employees will be laid in pursuant to the current rules pertaining to inclement weather.

Employees will provide themselves with suitable clothing to work in rainy weather."

The Claimant, Section Foreman R. Williams, was assigned as such at East St. Louis. Summer electrical storms occurred early on the morning of June 7, 1990 in the vicinity of St. Louis. The lighting abated later in the morning although intermittent rain continued to fall.

The Claimant and his gang had been assigned to clear up a derailment at Federal yard at Alton, Illinois. The Assistant Track Supervisor, E. D. Sperling, made an on site inspection to check the progress of the Gang. Sperling found two men donning rain gear and heading out on the Section and began work on the derailment. Claimant was still inside the shanty. Track Supervisor Sperling concluded that the work at the derailment site could be performed later. He therefore instructed Foreman Williams to load up his gang and go to Lenox to assist Foreman

Canton's gang. The Claimant Foreman refused. He told Supervisor Sperling that he was going to cut his time and go home, which he did. However, other members of Foreman Williams' gang, as well as the other two gangs, in the area for a total of 13 members, continued to work.

As a result thereof, the Claimant was cited to an investigation for insubordination. As a result of the investigation, Carrier concluded Claimant to be culpable of the charge. He was assessed thirty days actual suspension as discipline therefor.

Claimant was accorded the due process to which entitled.

The evidence adduced was clear, competent and prohibitive and in such sufficiency as to support the Carrier's conclusion as to the Claimant's guilt of the charges placed against him. The instructions were clear, concise and to the effect that he was to load the truck and go to another location in order to work with another gang. Reasonable work instructions must be obeyed unless compliance therewith will endanger life or limb. Here, weather conditions were mentally speculative at the E. St. Louis location. The weather conditions were unknown at the other location. The fact is the gang that Claimant and his gang were instructed to assist did work the entire day. Thus, making the Claimant's choice not to work appear in a bad light and be insubordinate. The Claimant's assumption that the weather at the other location was the same as at Federal yard was wrong. The conditions was unknown to Williams at the time but in fact. The fact is that they were not the same. Even if the climatic conditions would have made it unsafe to work at the time the work instructions were given that fact would not, per se, give the Claimant a right to disobey those work instructions and to go home. The reason being that the record revealed that the weather gradually cleared up and the remainder of his gang was able to perform meaningful work later in the day.

Despite the conflict in the testimony between the Assistant Track Supervisor and the Claimant, and that the Carrier concluded that the Supervisor was the more credible, such conclusion was not shown to have been a violation of the discretionary right when it chose to believe its own witness. As to the other conclusion that the Claimant understood his Supervisor's work instructions and he chose to not obey them. Absent a bona fide reason shown therefor, the conclusion of insubordination must be upheld.

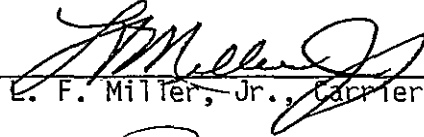
The discipline in light of the circumstances prevailing, will be upheld. Such conclusion is similar to analogous cases handled on this property which were handled by other Boards as well as by our Board in Award 51 and such as Third Division Award 17153 which denied the claims upheld issuing orders to work in the rain.

In the circumstances the claim is not found to be with merit. It will be denied.

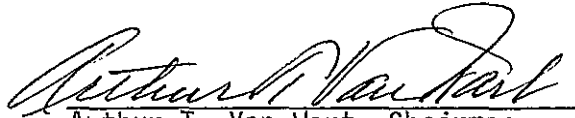
Award: Claim denied.



S. Hammons, Jr. Employee Member



E. F. Miller, Jr., Carrier Member



Arthur T. Van Wart, Chairman  
and Neutral Member

Issued December 31, 1991.