PUBLIC LAW BOARD NO. 1760

Award No. 24
Docket No. MW-DEC-79-28

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

Statement of Claim: Carrier violated the effective Agreement when Ms. Terry Goodwin was assessed forty-five (45) days of actual suspension.

Claimant Terry Goodwin shall be paid for the forty-five (45) actual days held out of service at her respective rate.

Findings: The Board, after hearing upon the whole record and evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, as a result of an incident, occuring on July 26, 1979, wherein she allegedly refused to perform work assigned by her supervisor, was dismissed from service on that date. A formal investigation, as requested by Claimant, was held on August 17, 1979 to determine:

> "...your responsibility in connection with your insubordination towards your supervisor at approximately 3:00 p.m., Thursday, July 26, 1979, in Decatur Yards, in that you refused to perform work assigned to you by your supervisor, while working as laborer on WT-13 gang at Decatur, Illinois."

As a result of said investigation, the discipline was reduced to a forty-five (45) days actual suspension from service.

The incident, briefly stated, arose when Claimant's Foreman, Mr. Otto, instructed Claimant and another Laborer, Mr. Eubanks, to get shovels and commence digging when they were finished pulling spikes. Laborer Eubanks did as instructed. However, Claimant was observed standing around talking with other employees. Hence, when the Foreman questioned her

failure to follow his instruction Claimant allegedly told him "to go to hell."

Claimant alleged that she was walking on the other side of the tracks and did not hear the instructions given. She denied that she told the Foreman "to go to hell." Claimant did admit that she said "oh hell." However, the Foreman testified that she had said "go to hell."

It is clear that there was a factual difference existing the nature of which could cause a different reaction to the particular set of facts. Nevertheless, insubordination can be either by commission or by omission. It appeared to the Foreman, that at least it was by conduct.

In the particular circumstances of this case, there obviously was some doubt as to the nature and degree of the insubordinate act because of the change in the discipline assessed. It does appear that the discipline assessed when applied to the facts was excessive. Claimant was entitled to the benefit of the doubt. Consequently, a 15 day suspension would have been more reasonable in the particular circumstances.

Award: Claim disposed of as per findings.

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

M. W. Christie, Employee Member

G. C. Edward, Carrier Member

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Falmouth, Massachusetts, June 30, 1980.