

PUBLIC LAW BOARD NO. 1760

Award No. 28

Docket No. MW-DEC-79-20

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim 1. Carrier violated the effective Agreement when Donald R. White was dismissed on June 27, 1979.

2. Claim that Donald R. White shall now be returned to his former position as roadway equipment repairman with all rights unimpaired.

Findings The Board, after hearing upon the whole record and all 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, a Roadway Equipment Repairman, employed for some 5 1/2 years, was dismissed from service, effective June 27, 1979, in connection with his unauthorized use of a company vehicle, carrying an alcoholic beverage in a company vehicle, having an unauthorized passenger other than a company employee in a company vehicle and being involved in an accident, resulting in damage to company vehicle at approximately 1:28 AM, Tuesday, June 26, 1979.

Claimant admitted that he had been drinking prior to driving the company truck. However, he asserted that the accident was caused by a faulty steering mechanism, which he had previously reported and was not the direct result of his drinking. Claimant also pointed out that since that incident he recognized that he had a problem

and joined an alcoholic rehabilitation service provided by his community, that he has voluntarily, satisfactorily and enthusiastically participated in the prescribed thereapy for over six months as per the advice of the Chief Administrator of such services. The latter recommended that Claimant was considered a good risk for re-employment.

The Board finds that there are circumstances in this case which serve to mitigate the discipline assessed. Consequently, in view of Claimant's service record, the personal progress that he has made by going back to and graduating from college, the high personal recommendations and character references made by community representatives, but more importantly that Claimant has achieved progress on his "problem" by successfully completing the Employee's Assistance Program, as well as joining AA and has been recommended as being a good risk for employment purposes, we will, in keeping with the purpose of such programs for salvaging employees who want help and so demonstrate their desires, to protect the investment in such an employee, recognize the cornerstone to achieving success in any such program by giving personal encouragement. Therefore, we shall restore Claimant to service with all rights unimpaired, but without pay for the time out of service. However, Claimant is to be placed on a probationary basis for an eight (8) month period. Continuance of Claimant's progress rests with him.

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.

M. C. Christie

M. C. Christie, Employee Member

G. C. Edwards

G. C. Edwards, Carrier Member

Arthur T. Van Wart

Arthur T. Van Wart, Chairman
and Neutral Member