

PUBLIC LAW BOARD NO. 1760

Award No. 46

Case No. 46

Docket No. MW-DEC-7920

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company (Former Wabash)

Statement

- of Claim: 1. Carrier violated the effective agreement when Donald R. White was unjustly dismissed on November 25, 1981.
2. Claimant White shall now be returned to service with all rights unimpaired, that he be paid for all time held out of service.

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 for 8 years, was notified, under date of November 25, 1981, by the Division Engineer Maintenance as follows:

"You are hereby dismissed from all service with the Norfolk and Western Railway Company at 4:14 PM, November 25, 1981 in connection with violation of Safety Rule 1001 of the Norfolk and Western Safety Rule Book effective March 1, 1981 in connection with the accident of vehicle 5568 near Pittsfield, Illinois at approximately 8:00 PM November 23, 1981. Also, insubordination in connection with your duties and responsibilities on November 24, 1981."

As requested a formal investigation which was ultimately granted and held January 7, 1982 on the charge:

"Rule G, Rule 1001, Rule 1001C, Rule 1003.
You are also charged with the unauthorized

use of the vehicle 5568 at the time of the accident and being charged with the following rules of the Norfolk and Western Railway Company Form MM158, Rules and Instructions Governing The Use Of Operation and Maintenance of the Norfolk and Western Owned Highway Motor Vehicles, Rule 4-Page 1, Rule 8 - Page 19. You are also being charged for insubordination in connection with your responsibilities and duties on November 24, 1981."

As a result of the investigation held, Claimant was notified under date of January 18, 1982 that the dismissal was upheld.

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

There was sufficient, competent, credible evidence adduced to support the conclusions reached by Carrier as to its conclusions of Claimant's guilt on the charges placed against him. The accident report from the Illinois State Police signed by an Officer Clendenny and Tower Operator Douglas Cox who picked Claimant up and drove him to the Police Station, was at the investigation. Further, supportive testimony was given by Division Engineer Cashner, who had interviewed Pike County Deputy Sheriff Gwartney who had stated that in his opinion Claimant appeared to be intoxicated, when he was trying to persuade said Sheriff to arrest somebody who had tried to sell him some dope but was unable to designate the alleged perpetrator.

Claimant was also properly found guilty of violating standing instructions to communicate with his supervisor twice a day when away from home. He also failed to timely advise as to the N&W vehicle being overturned.

This Board is impelled to find that the discipline assessed, in light of Claimant's service record, particularly that he had been reinstated by our Award No. 28 also involved Rule G and driving a Company truck, was reasonable. This claim will be denied.

Award: Claim denied.

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M. A. Christie

M. A. Christie, Employee Member

S. C. Lyons

S. C. Lyons, Carrier Member

Arthur T. Van Wart

Arthur T. Van Wart, Chairman
and Neutral Member

- Issued December 14, 1984.