

PUBLIC LAW BOARD NO. 1760

Award No. 48

Case No. 48

Docket No. MW-DEC-82-3

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 laborer Joe Settles was unjustly dismissed on February 12, 1982.

2. Claimant Settles shall now be returned to service and pay for all time lost due to the Carrier not sustaining charges as provided in Rule 20 of the Agreement.

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 Laborer for some 8 1/2 years, was working in Lafayette, Indiana on the Decatur Division. He was advised, under date of January 12, 1982, to attend a formal investigation, to be held on January 27, 1982 on the charge:

"...to determine your responsibility, if any, concerning violations of Safety Rule 1003 of the Norfolk and Western Railway Company Safety Rule Book and Rules of General Conduct, effective March 1, 1981, and Rule 1 and 2 on Page 1 of the Rules of Instructions Governing The Use and Operation and Maintenance of Norfolk and Western Owned Highway Motor Vehicles and also insubordinate of not cleaning switches as instructed by N&W supervision at Lafayette Yard on Sunday, January 10, 1982, and returning home unauthorized in a Norfolk and Western Company

vehicle, which you had no valid driver's license and leaving keys in said vehicle while it was parked at your home. You are further charged with Rule G of the Norfolk and Western Railway Company Safety Rules and Rule of General Conduct effective March 1, 1981 in that you reported to work at 6:55 AM January 12, 1982 at Lafayette intoxicated."

As a result of the investigation, Claimant was dismissed from service under date of February 12, 1982 as discipline therefor.

Claimant was called about 10:00 AM on Sunday, January 10, 1982, because of severe weather conditions, high winds and low temperatures to sweep switches at Lafayette Yard two blocks from his home. While initially declining to work, Claimant reported to the yard before noon. He was so instructed by Trainmaster Wise at approximately 1:00 PM on the work to be performed. At 1:30 PM the Trainmaster was in the area where Claimant was suppose to be working and found no evidence that he had been there. About an hour later, the Trainmaster found the company truck parked at Claimant's driveway.

On January 12, Claimant reported to the office at 6:55 AM for work. He was observed by two supervisors and one property protection officer, to be in an intoxicated state. He was therefore removed from service.

The Board finds that Claimant was accorded the due process to which entitled under his discipline rule.

There was sufficient evidence adduced to support the conclusion reached by Carrier as to Claimant's guilt.

The discipline assessed in the circumstances and in light of Claimant's service record is found to be reasonable. This claim will be denied.

Award: Claim denied.


M. A. Christie, Employee Member


S. C. Lyons, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member