

PUBLIC LAW BOARD NO. 1760

Award No. 72

Case No. 72

File: MW-STL-82-2

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company (Former Wabash)

Statement

of Claim: Appeal from discipline of 60 days actual suspension assessed M. J. Stewart by letter dated December 27, 1984, as a result of investigation held December 7, 1984.

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 was notified on November 21, 1984 as follows:

"You are hereby directed to report to the Conference Room at 200 Carr Street, at St. Louis, Missouri at 1 p.m., Friday, December 7, 1984 for a formal investigation to determine your responsibility for your failure to comply with my verbal instructions notifying you not to go to Alton, Illinois for the purpose of buying parts which instructions were issued at approximately 7:45 a.m., November 9, 1984, and for your failure to fulfill the duties of your position as Tamper Operator on November 19, 1984 in that you walked off the job and left Wilds Yard at approximately 8:20 a.m. without authority."

Following the investigation, Carrier concluded therefrom that Claimant was guilty of the charges. He was assessed 60 days actual suspension as discipline therefor.

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

support Carrier's conclusion as to the first charge, i.e., failure to follow verbal instructions not to go to Alton, but as to the second charge there was insufficient evidence.

Claimant asserted that the condition of his machine was such that he could not safely operate same. However, as to the first charge the parts purchased by Claimant were not necessary for repairs to his machine. As to the second charge, Claimant said that he would rather go home before he would run the machine in its present condition and his Foreman said that was fine with him. The Foreman's statement is treated as condonation.

As to the discipline assessed, the Board finds that the circumstances permit the discipline to be reduced to 30 days.

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. A. Christie
M. A. Christie, Employee Member

S. C. Lyons, Carrier Member
S. C. Lyons, Carrier Member
Carrier
dissents

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member

Issued August 18, 1986.