

PUBLIC LAW BOARD NO. 1760

Award No. 74

Case No. 74

File: MW-FTW-85-2 (Laffin)

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Norfolk and Western Railway Company (Former Wabash)

Statement

of Claim: Appeal from discipline of 47 days actual suspension
assessed R. Z. Laffin as a result of investigation
held on March 12, 1985.

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, on January 6, 1985, was arrested by two Peru, Indiana, city police officers for public intoxication while on duty as a crossing watchman. A report of said incident appeared in the local newspaper reading:

"Rubin F. Laffin, 50, 226 W. Ninth St.,
arrested yesterday by city police on a charge
of public intoxication. He is to appear in
circuit court."

Claimant was notified to attend a formal investigation on January 28, 1985 to determine his responsibility in leaving his position unprotected on January 6, 1985 and for being arrested for public intoxication while so assigned.

As a result of the investigation held on March 12, Claimant was found to be culpable by the Carrier. He was assessed 47 days actual suspension as discipline therefor.

The Board finds that there was sufficient competent and probative evidence adduced to support Carrier's conclusion that Claimant was culpable of the charges. The record reflects that he had his wife call the police to come to his Freemont Street Crossing shanty because

he had certain individuals in his shanty earlier in the evening and thought that "his billfold had been pickpocketed."

The arrest report indicated that:

"Both officers were able to detect a strong odor of alcohol and the subject was having a great deal of trouble standing, his speech was slurred, and the longer he talked the less sense he made, and started to get very uncooperative. I asked the above to take a performance test and he refused... the subject had to be helped from the car and assisted into the lockup area, as he was very unsure on his feet and was nearly falling down..."

Claimant testified that people had been in his shanty, they had offered him a drink but he refused it and they spilled the "jug all over me." Also, that when the Officer told him that he stinks Claimant told him he did not smell so good himself and to go smell some of his fellow officers and named them.

Claimant was incarcerated and later released. On March 11, 1985, the State of Indiana filed a motion with the Miami County Circuit Court to dismiss the charges against Mr. Laffin without prejudice. However, that fact does not serve to change the charges placed against him by his employer. The two proceedings are mutually exclusive. Clearly, Claimant had left his position unprotected on January 6 because of his incarceration which arose as the result of Claimant's own actions. In the circumstances, the Board finds that the discipline should be not be changed.

Award: Claim denied.


M. A. Christie, Employee Member


S. C. Lyons, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued August 18, 1986.