

PUBLIC LAW BOARD NO. 1760

Award No. 86

Case No. 86

File MW-DEC-80--36

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement

of Claim: Claim on behalf of R. L. Butler requesting reinstatement with all rights unimpaired and that he be paid for time lost as a result of his dismissal following investigation held September 16, 1987 wherein he was charged with excessive absenteeism.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board.

Claimant, on April 28, 1987, was regularly assigned to the R-3 Rail Gang, which is responsible for fitting and installing rail on the Western Region of the Norfolk and Western Railway. He missed work on the following dates: April 29, 30; May 5, 6 and 26, June 28-1/2 hour late, July 1-called 3:00 PM diarrhea and upset stomach, July 6-daughter in accident, July 7-went to police department account of daughter's accident, July 10-worked 6 hours, July 13-called in sick, July 14-chest pains and doctor's appointment, July 15-under doctor's care, July 17-____, July 20-car trouble, July 22-asthma attack, July 24-car trouble, July 27-illness and doctor's appointment, July 28____. The above absences accounted for 30% of the available work hours during this period.

Claimant was notified to attend a formal investigation on the charge:

"To determine your responsibility in connection with your being excessively absent from your assignment... The latest occurrence being Tuesday, July 28, 1987."

The investigation was finally held on September 16, 1987. The Carrier concluded therefrom that Claimant was guilty. He was dismissed from service as discipline therefor.

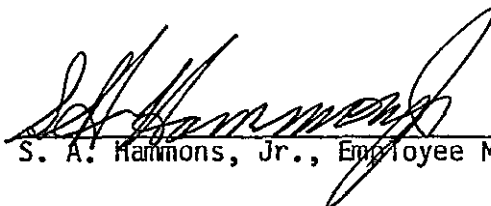
Claimant was accorded the due process to which entitled.

There was sufficient evidence adduced including Claimant's admission to support Carrier's conclusions as to his culpability.

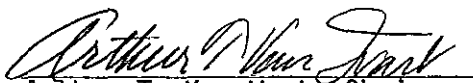
However, the Board finds circumstances to modify the discipline offering the Claimant a last chance opportunity. He will be conditionally reinstated without pay for all time lost, of course, is subject to Carrier's physical examination, will enter into a one year probationary status period during which he will have the protection of his labor agreement. The Claimant is reminded this is his last chance to demonstrate to the Carrier and to his Union that he desires to be considered as a regular full time employee of the Carrier. It should not be necessary to remind the Claimant that he has an obligation to protect Carrier's services on the days that he is assigned to work and that failure to do so is sufficient grounds for discipline, including dismissal. In view of a last chance opportunity the Claimant will be walking a very thin line.

Award: Claim is disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


S. A. Hammons, Jr., Employee Member


L. E. Miller, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued July 27, 1989.