

PUBLIC LAW BOARD NO. 1760

Award No. 95

Case No. 95

File MW-FTW-85-35

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

Statement

of Claim: Claim on behalf of G. A. LeMay requesting reinstatement and pay for time lost as a result of his dismissal for insubordination.

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

Claimant was dismissed for insubordination. The incidents that led to the formal investigation permitting the discharge concern the use of a Company vehicle for travelling home on the weekends. The Claimant's days off.

Claimant began working in Springfield, Illinois as a Foreman on April 4, 1988. He asked his direct supervisor Roadmaster McGinnis if he was allowed to drive the company truck to his residence on weekends. Mr. McGinnis advised the Claimant he could not take the vehicle home as there was potential liability associated with that type of usage. The Roadmaster further explained that taking the truck home on weekends would place both of their jobs in jeopardy. Claimant made a similar request on April 9. It was again refused.

Roadmaster McGinnis, at the end of April, had received and was reviewing the gasoline receipts of the employees that used the Company vehicle. He noted that the Claimant had purchased gas for the truck on April 10, which was a Sunday. Mr. McGinnis reiterated his prior instructions to Claimant that he was never to drive the Company vehicle home on weekends without his permission or to take it home for personal use.

Mr. McGinnis noticed that over the weekend of May 21-22, 1988 that Claimant's vehicle was not parked in the Company headquarters. On Monday, May 23rd the Roadmaster asked the Claimant where the truck had been over the prior weekend. The Claimant told him that he had taken it home. It was later noted that he had made two separate gasoline purchases on May 22 on the Company charge account.

Claimant was notified on May 26 to attend a formal investigation regarding charges of insubordination in

connection with driving Company vehicle 7531 on May 19, 1988. The investigation was finally held on July 26, 1988. Based on the evidence adduced Carrier concluded that Claimant was guilty as charged. He was dismissed from service as discipline therefor.

Claimant was accorded the due process to which entitled under Rule 30, insubordination in the circumstances herein was a major offense. As pointed out by Second Division Award 5360 (Knotts):

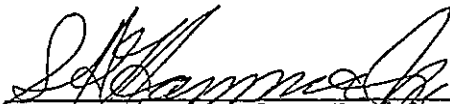
"..insubordination in particular and major infractions in general had been found in previous awards to be proper cases for pre-hearing suspension."


There was sufficient evidence adduced to support Carrier's conclusion as to Claimant culpability.

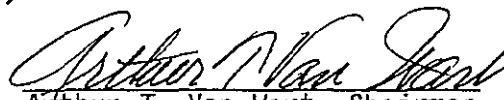
The Board finds reason to conditionally reinstate Claimant to service with all rights unimpaired but without pay for time out of service on a last chance basis. He will be placed in a probation status for 6 months during which time Rule 30 is applicable to him. Claimant is given the last chance opportunity to demonstrate to the Company and to the Union that he desires to be a cooperative and understanding employee.

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.


S. A. Hammons, Jr., Employee Member


L. F. Miller, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued August 14, 1989.