

PUBLIC LAW BOARD 1837

CASE #16

AWARD 16

(MW-MUN-76-13)

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
vs
Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement dated February 1, 1951 on June 10, 1976, when they dismissed Claimant Roosevelt McCoy, Extra Gang Laborer, without a fair and impartial investigation as provided in Rule 22 of the M. W. Agreement.

2. Claimant McCoy be reinstated immediately with seniority, vacation and all other rights unimpaired and pay him for all loss of wages suffered by him, beginning June 10, 1976, until he is returned to service.

FINDINGS: This Board upon the whole record and all the evidence finds that:

The carrier and employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as amended.

This Board had jurisdiction over the dispute involved herein.

OPINION:

While the record of this case raises certain questions as to precisely what happened during the second week of June, 1976, as relates to the Claimant, the fact remains that a record of employment existed for the Claimant post June 10, 1976. The Organization's assertion that the Claimant was "returned" to service as a reaction to its intervention of the earlier dismissal is unsupported on the

record. The record is noticeably devoid of any input from the Claimant which might have constructively dealt with some of the uncertainties this Board encounters. In any case, we find no basis to conclude a dismissal occurred and certainly not one as of June 10, 1976.

AWARD:

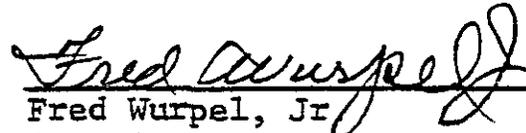
Claim is denied.



James F. Scearce
Neutral Member



G. C. Edwards
Carrier Member



Fred Wurspel, Jr
Organization Member

Dated this 28th day of April, 1980 at Atlanta Ga