AWARD NO. 24

PUBLIC LAW BOARD 1837

(MW-MUN-77-54)
Case No. 2

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM:

1. The carrier violated the effective Agreement dated February 1, 1951, when it dismissed the claimant C. R. Bennett, Jr.

2. The discipline of dismissal is excessive, harsh and unjust for the offense charged. The claimant now be restored to service with seniority and rights unimpaired and payment allowed for the assigned working hours actually lost, less any earnings in the service of the Company.

FINDINGS:

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

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

This Board has jurisdiction over the dispute involved herein.

OPINION:

The claimant was removed from service on the basis of a single incident which occurred on May 11, 1977 when, near the close of his shift, he left his assigned position and refused to return at the directive of the Roadmaster asserting, instead, that he was going to wait for his ride. According to the Road-

master's testimony, the person with whom the Claimant was to ride remained at work until properly relieved.

The record of this case shows that the Claimant was duly notified to appear for a formal investigative hearing on May 26, 1977 but, for reasons not afforded either the Carrier or his representative with the Organization, he failed to appear. The Organization endeavored to construct its defense principally upon the testimony of the Roadmaster, suggesting that he gave the Claimant permission to leave. While the Roadmaster's statement (before the May 26, 1977 investigation) may have had elements of equivocation in it, we shall not be moved to such a position. The record sufficiently indicates that the Claimant unilaterally decided he had worked long enough on May 11, 1977 and, if not insubordinate, was clearly non-cooperative. Such disdain for authority was amplified by his apparent decision not to appear for the May 26, 1977 proceeding. While we might agree a sufficient explanation might have mitigated the May 11, 1977 incident, such was not forthcoming; instead, the problem was compounded by the Claimant's non-appearance. While we give the Organization high marks for its efforts to do for the Claimant that which he apparently chose not to do for himself -- regain his job -- we are inclined to conclude that the Claimant himself chose the end result by his lack of interest to appear in his own behalf.

AWARD:

Claim is denied.

James F. Scearce
Neutral Member

G. C. Edwards
Carrier Member

W. E. LaRue
Organization Member

Dated at Atlanta Ga this 12 day of Aug 1980