

PARTIES TO DISPUTE:

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

PLB 1837
AWARD 3
NW BMS 76-21

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement by dismissing Extra Gang Laborer Roy Harton, on July 2, 1976, from Carrier's service in an unjustified and arbitrary manner.

2. Claimant, Roy Harton be reinstated with seniority, vacation and all other rights unimpaired and that he be compensated for all money loss suffered by him, beginning May 26, 1976 up to the date he has been reinstated.

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.

OPINION:

The Claimant was taken out of service on May 26, 1976, on a charge of sleeping on duty. The record shows that the Tie Gang, of which the Claimant was a member, was in the process of moving from Canton, Ohio, to Cleveland. The Claimant rode in a private automobile with another employee and, according to the Claimant's testimony, the two employees were delayed enroute for reasons which had been made known to his supervisor beforehand; according to the Claimant, the supervisor advised them if they were not at the new site by noon, they would be off-duty for the remainder of the day. The result was their

arrival at the new location after 12:00 noon and the other crew members had left for a new work assignment. According to the Claimant, the Trainmaster at the new location was contacted upon their arrival and told the two employees to wait for the crew's return. Thus, according to the Claimant, based upon the statement he contends was made by his foreman, he assumed himself to not be under pay and not on duty. The Organization also asserts that the hearing officer prejudiced the proceeding by hearing testimony of Carrier witnesses and that the Claimant's guilt was prejudged by the charging officials.

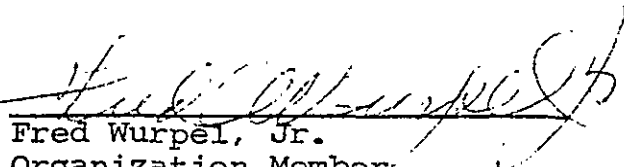
As regards the Organization's claim that the hearing was not procedurally correct, we find no flaws of sufficient gravity to upset the Carrier's decision. We note that the Claimant had two year's service at the time of this incident. While we shall conclude that the Agreement was not violated in this case and assuming that the Claimant will recognize the Board's action for what it is -- a "last chance" -- we shall return him to duty with the strong admonishment that he should be an exemplary employee in the future.

AWARD:

The Claimant will now be returned to Service, with full seniority rights but without pay for time lost.


James F. Scearce
Neutral Member


G. C. Edwards
Carrier Member


Fred Wurpel, Jr.
Organization Member

Dated this 1st day of Feb. 1980 at Cleveland, O.