

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 April 1, 1951, on June 23, 1976, by unfairly and improperly dismissing Claimant J. Obermiller from service.
2. Claimant James Obermiller shall be reinstated to Carrier service, compensated for all wages lost, and have all seniority and other rights returned unimpaired.

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 events which culminate in this Board's deliberation occurred on June 22 and 23, 1976. On June 22, 1976, the Claimant, an Assistant Section Foreman (whose status is covered by the provisions of the applicable Agreement), confronted his supervisor -- a Section Foreman -- relative to the foreman's permitting other parties to perform a certain increment of work. A disagreement developed between the Claimant and his supervisor, the substance and tenor of which is somewhat in dispute: the Foreman contends he tried to reason with the Claimant in a non-threatening tone did not exchange verbal abuses with him and that the Claimant chose a setting on June 22 where other employees could be privy to the

dispute; the Claimant contends the discussion on that date (June 22) was in reasonable privacy and that the foreman contributed to the problem by calling the Claimant a liar and otherwise inciting his unfavorable response. The record of this case indicates that corroborating testimony of either version was tentative, at best. The Carrier cites a threat to "kill you" uttered by the Claimant to his foreman which it considers of sufficient gravity to prompt his removal. While differences in the facts do exist and it is a well established principle that this Board cannot resolve such disparity in assertions, it is clear enough that the Claimant had alternatives available to him if he felt the foreman was in error in the disputed work assignment: the most obvious was the grievance procedure. The sequence of events leaves little doubt that he fomented the dispute in his challenge to the foreman on June 22 and by his admittedly brash if not insubordinate action on June 23, 1976. We have no reason to conclude that his threat to "kill" was any more than a gross error in judgment resulting from allowing his temper to get out of hand. Noting that both the Claimant and the Carrier have several years invested in their relationship, we shall order the Claimant returned to duty with his seniority intact, but without back pay. We suggest that the Claimant take this opportunity to demonstrate that his actions of June 22 and 23, 1976, are not indicative of his attitude and ability. We conclude that

the Agreement was not violated.

AWARD:

Claim is denied on its merit, but the Claimant shall
be returned as set out in the Opinion.



James F. Scearce
Neutral Member



G. C. Edwards
Carrier Member



Fred Wurpel, Jr.
Organization Member

Dated this 15th day of Feb. 1, 1980 at Cleveland, O.