

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

Award No. 88

STATEMENT OF CLAIM: Claim of the Brotherhood that:

Claim on behalf of G. W. Hoag requesting removal of discipline and pay for time lost, as a result of the assessment of a thirty-day suspension from service following investigation held on December 15, 1992, in connection with continued failure to protect his assignment without permission to be absent.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of failing to protect his assignment for several weeks beginning October 8, 1992. The Claimant requested vacation and a leave of absence and both of those were denied. The Carrier subsequently learned that the Claimant had been incarcerated because he had previously been on work release and had failed a drug screen that was required by the


correctional facility.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary or capricious.

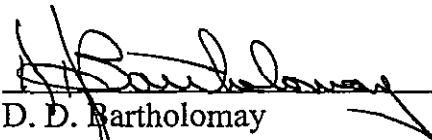
The Carrier has the right to expect that its employees will be available for duty and will report as assigned. Numerous cases have held that incarceration does not justify an employee's absence from work. Given the fact that the Claimant was absent without permission for a lengthy period of time, this Carrier did not act unreasonably, arbitrarily, or capriciously when it imposed a 30-day suspension. Therefore, the claim will be denied.

AWARD


Claim denied.



Peter R. Meyers
Neutral Member



D. D. Bartholomay
Organization Member



E. N. Jacobs, Jr.
Carrier Member

DATED: 1-3-95

DATED: December 21, 1994