

PUBLIC LAW BOARD NO. 1838

Award No. 10

Case No. MW-PE-76-100

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement of Claim: 1. Carrier violated the effective Agreement on July 15, 1976 when it dismissed Section Laborer J. E. Hawkins from Carrier's service.
2. Claimant shall be restored to service, with vacation, seniority and all other rights unimpaired, and paid for all time lost.

Findings: The Board finds, after hearing upon the whole record and all evidence that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, a Section Laborer, for two (2) years, was dismissed from service July 19, 1976 for being habitually late and absent from service without permission as required by Agreement Rule 26. The investigation subsequently held at Claimant's request, gave no cause for change in the discipline imposed.

Agreement Rule 26 provides:

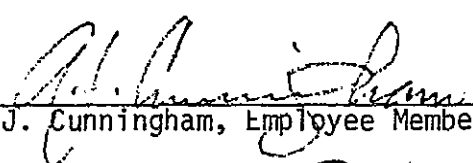
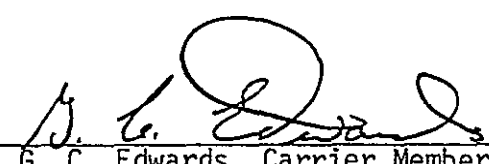
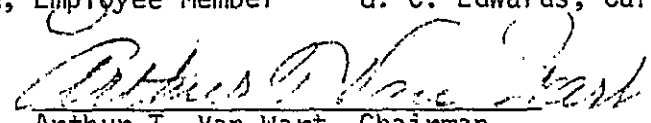
"An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. An employee detained from work on account of sickness or for other unavoidable cause shall notify his foreman or the proper officer as early as possible."

The Board finds that Claimant was given a fair and impartial hearing, and that Carrier had proven Claimant's culpability for being habitually tardy and absent from service without the required authoritative permission.

However, the Board also finds that there are circumstances herein which serve to mitigate the discipline imposed. Claimant's burdensome family problems, which were the cause of many of the absences complained of, were considered by his immediate supervisors to be "cause" for such absences. Consequently, they should not have been weighted for Claimant's permanent dismissal. Claimant has been off sufficient time to learn and understand his obligations and his responsibility which are due under Rule 26, supra. Therefore, Claimant is reinstated to service without any pay for the time held out of service, subject to his passing the usual return to service physical examination and also to reviewing his service record with the Division Engineer, or his representative, and the General Chairman, or his representative, before resuming duty.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this award effective within thirty (30) days of date of issuance shown below.

 A. J. Cunningham, Employee Member	 G. C. Edwards, Carrier Member
 Arthur T. Van Wart, Chairman and Neutral Member	

Issued at Wilmington, Delaware, May 1, 1978.