

PUBLIC LAW BOARD NO. 1838

Award No. 11

Case No. MW-BL-76-102

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

Statement of Claim: 1. Carrier violated the effective Agreement by unfairly and unjustly dismissing Laborer A. O. Braggs from Carrier service on September 22, 1976.
2. Claimant Braggs be returned to service with all seniority rights unimpaired and that he be allowed Section Laborer's pay at straight time rate beginning September 1, 1976, and continuing until such time as this matter is corrected.

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.

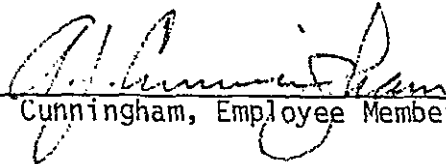
Claimant, a Section Laborer for three (3) months, was dismissed from service for having walked off the job at approximately 10:30 a.m. on August 31, 1976. The investigation subsequently held at Claimant's request failed to cause any change in his dismissal.

Claimant on August 31, 1976, was operating a spike driver, which, according to Claimant was operating poorly. Claimant's Foreman came to him on several occasions to demonstrate the better way to operate the air driven spiking hammer. On the last such occasion said Foreman alleged that Claimant stated that he was going home whereupon he picked up his lunch bucket and left the property. Claimant alleged that the Foreman told him to go

home. Carrier chose to believe the testimony of its Foreman.

The Board finds no cause in this record to believe that Carrier abused its discretionary right. The record fails to support any allegations that Carrier's conclusions were arbitrary or capricious. Consequently, absent reason for interfering with Carrier's exercise of its discretionary authority, this claim will be denied.

Award: Claim denied.


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.