

Award No. 17

File MW-STP-77-100

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

Statement of Claim The Brotherhood requests that Section Laborer J. L. Salyers be restored to service of Norfolk and Western Railway Company with vacation, seniority, and all other rights unimpaired, and that he be paid for all time lost as a result of being dismissed.

Findings The Board, after hearing upon the whole record and all evidence, finds 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, was dismissed from service as a result of his continued unauthorized absence from service beginning February 26, 1977 up to and including April 18, 1977. The requested formal investigation was held in connection therewith on May 16, 1977 and as a result thereof Carrier concluded that Claimant was guilty as charged and the discipline of dismissal was upheld.

Rule 26 of the Agreement between the parties reads:

"Rule 26 - Detained From Work

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 hearing pursuant to Rule 33 - "Discipline and Grievances".

While there was sufficient evidence to support Carrier's conclusion that Claimant had missed 10 days out of a possible 41 work days the Board does find that there were circumstances which serve to mitigate the discipline imposed. The 10 days that Claimant failed to work were his assigned days off. Such fact does not, per se, excuse Claimant. However, they were such a factor as to be given consideration. In the circumstances the Board will return Claimant to service with all rights unimpaired, but without any pay subject to the usual return to service examination and that he meet with his Local Representatives and the Carrier Representative to review the intent purpose of Rule 26 as well as Claimant's obligation to protect the requirements of Carrier's service. Thereafter, the future of Claimant's employment relationship will be entirely up to himself.

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. D. Arnett, Employee Member


G. C. Edwards, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, November 26, 1979.