

PUBLIC LAW BOARD NO. 1838

Award No. 18

Case No. MW-PO-77-112

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim Elmer Kitchen was dismissed from service for conduct unbecoming of an employe of the Carrier. Claimant pleaded guilty -we ask leniency in this instant case and return Mr. Kitchen to service without pay.

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 was dismissed from service, effective October 28, 1977, for conduct unbecoming an employee in that he was found to be in the possession of alcoholic beverages and marijuana on camp car N&W527144, at approximately 6:00 AM on October 28, 1977; and for permitting two (2) unauthorized persons on said camp car located at the old P. C. Freight House, Circleville, Ohio. .

Claimant was given a formal investigation on November 18, 1977 and he plead guilty thereto and requested leniency.

This is a request for leniency. The Board finds in the circumstances that it shall dismiss same as a request for

leniency is a matter for the Carrier to determine. As pointed out in Third Division Award 15566 (Lynch)

"An investigation was held on the facts as here outlined were admitted. This Board has consistently ruled that we should not substitute our judgment for that of the Carrier in matters of this kind unless there is clear evidence that in the exercise of its right to discipline the Carrier acted in an arbitrary or capricious manner.

We find no violation of Rule 27; nor have we the authority to overturn Carrier's action on the basis of leniency. Leniency is a prerogative of management. Awards 9775, 11914, 12104, 13116, 14800."

A denial Award will serve as well as a dismissal.

Award Claim denied.



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.