

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim Request on behalf of Jimmie David Sammons for reinstatement to service or in the alternative for a formal investigation.

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 last worked for Carrier on December 16, 1976. He called his Supervisor, Roadmaster Wilson Short, on Friday, December 17, 1976, and asked him for a couple of weeks off. The Roadmaster advised Claimant that he was needed on the job and that he could not afford to give him the time off. Claimant, nonetheless, continued to remain off.

Said Roadmaster, on April 29, 1977, wrote to Claimant as follows:

"This is to notify you that you are released from the service of the Norfolk and Western Railway Company for failure to comply with Rule 26 of the current Maintenance of Way Agreement which states:

'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."

Claimant attempted to return to service on November 21, 1977.

He contended, at that time, that he had been under medical care after shooting himself. Claimant was advised that he no longer had an employment relationship with the N&W Railway Company.

Claimant contacted his Employee Representative, who, on December 5, 1977, wrote the Roadmaster requesting "that unless the Claimant be given the opportunity to return to work immediately, that an investigation be held in his behalf". The Roadmaster replied to the General Chairman, on December 14, 1977, as follows:

"Inasmuch as your request for formal investigation is not within the time limit specified in the current Maintenance of Way Agreement, it is respectfully declined."

Rule 33 - Discipline and Grievances - provides in pertinent part:

"(a) An employee disciplined or dismissed will be advised of the cause for such action in writing. Upon a written request being made to the employees' immediate superior by the employee or his duly accredited representative within ten calendar days from date of advice, the employee shall be given an investigation."

(Underscoring supplied)

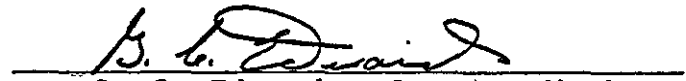
Here, the bar of time limits had been raised by the Carrier. The record is clear. The cause of the delay rests with Claimant. Claimant was advised December 17, 1976 that he could not be off without permission. He was put on notice on April 29, 1977,


and he failed to take any affirmative action. Consequently, the Board, based on the facts before it, is impelled to conclude that Claimant having failed to make a written request within ten calendar days from the date of the advice given him is not thereafter entitled to be granted an investigation.

Therefore, the instant claim is barred. In the circumstances, 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 Salem, New Jersey, December 27, 1979.