

PUBLIC LAW BOARD NO. 1838

Award No. 34

Carrier File:
MW-WI-79-23

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute: Norfolk and Western Railway Company
Statement of Claim: Claim on behalf of Mr. R. T. Copley for reinstatement and pay for time lost as a result of his dismissal from service effective October 25, 1978.

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 25, 1978, in connection with his unauthorized use of company vehicle MW1315, unauthorized use of company gasoline in a private automobile, shoving two rental portable toilets over a bank and damaging them and being under the influence of alcohol at approximately 12:05 AM to 12:30 AM on October 25, 1978 at Rawl, West Virginia near Mile Post 466.

An investigation, as requested, was granted and held on December 18, 1978. As result thereof Carrier concluded that Claimant was, in fact, guilty as charged and that the disciplining penalty imposed was fair, reasonable and fully commensurate with the nature of the offense involved.

Claimant was accorded all the due process to which entitled under his investigation Rule.

There was sufficient evidence adduced to support the conclusions reached by Carrier. The Assistant Division Engineer-Maintenance, Pocohontas Division, testified that at 4:30 AM some camp cars were on fire which

had been assigned to R-4 Rail Gang. His investigation disclosed that two cars had been destroyed by the fire, that he found two portable toilets had been shoved over a hill and that there were indications that a truck had been used to do it. In furtherance of his investigation he questioned several employees who told him that Claimant, along with a Mr. Parsons, apparently were under the influence of alcohol, had been running a truck up and down the road at a high rate of speed, that after shoving the two toilets over the hill, their pick-up truck, owned by Mr. Parsons, became stuck in the road bed.

Claimant and Parsons then helped themselves to a company truck to pull the pick-up out.


It was also revealed that Claimant had helped himself to company gasoline which was used in Mr. Parsons truck.

The Assistant Division Engineer-Maintenance testimony at the investigation was corroborated by a Special Agent and by two fellow employees, whose testimony pertaining to the other offenses, in addition, was that Claimant was under the influence of alcohol.


The evidence supports Carrier's conclusions.

In view of the extreme seriousness of the offenses and Claimant's short tenure of service, we find that the discipline was neither harsh nor unreasonable or that Carrier's assessment thereof was capricious. In the circumstances, this Claim will be denied.

Award: Claim denied.


A. D. Arnett, Employee Member


G. C. Edwards, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member