

PUBLIC LAW BOARD NO. 1838

Award No. 35

Carrier File
MW-LP-79-1

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute: Norfolk and Western Railway Company

Statement of Claim: Claim on behalf of Extra Force Laborer L. D. Russell for reinstatement and pay for time lost as a result of his dismissal from service effective November 20, 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 November 20, 1978, for being absent without permission from work on Friday, November 17, 1978.

An investigation, as requested, was granted and held on January 18, 1979 after being postponed from a previous date. As a result of said investigation, Carrier concluded that the discipline assessed should be upheld.

We find that Claimant was accorded the rights of due process under Rule 33 - Discipline and Grievances.

There was sufficient evidence adduced at the investigation held to conclude that Claimant was guilty of the offense charged, to it - absence without permission on Friday, November 17, 1978.

Claimant has been an employee for 4 1/2 years at the time of his dismissal. He had been previously dismissed for unauthorized absenteeism effective August 12, 1975. Such discipline was mitigated to a suspension

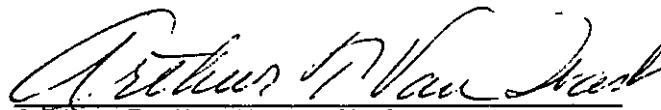
and Claimant was permitted to return to work on September 12, 1975. He was assessed a 10 day actual suspension on June 16, 1976 for unauthorized absenteeism. Again on October 11, 1977 Claimant was given a five day suspension for unauthorized absenteeism.

We find no cause in this record to grant Claimant an additional opportunity. He has been shown leniency once by the Carrier. Trying to apply progressive discipline did not work, giving warnings failed to work. Carrier should not be required to provide a haven for an employee who neither has an interest in, nor a desire to work for Carrier. Consequently, Carrier should not be burdened with such employee. 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

Issued at Salem, New Jersey, March 2, 1980.