

PUBLIC LAW BOARD NO. 1838

Award No. 44

Carrier File MW-LY-79-16

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: The employees request that Claimant C. R. Tinsley be restored to service with seniority, vacation rights, and other benefits unimpaired.

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 Foreman with over 34 years of service, was dismissed from service June 21, 1979 after being observed in the act of and illegally removing 10 gallons of Carrier's gasoline from Carrier's property.

A formal investigation, granted, pursuant to Agreement Rule 33, was held July 20, 1979 in connection therewith. Carrier concluded therefrom that Claimant was guilty as charged.

Here, there is no dispute as to Claimant's guilt. The record, including Claimant's admission, supports such conclusion.

The Board would normally not interfere with the discipline imposed. However, there are circumstances herein which serve as mitigating factors. Claimant's long years of service, an excellent service record which also contained several commendations for service beyond the call of duty, the petitions and request from his fellow employees, and shippers, as well as Claimant's forthrightness, candor, and truthful answers at the investigation all serve to modify the discipline assessed.

Claimant will be restored to service but only as a Laborer on a year probationary basis, with all rights unimpaired but without any pay, subject to passing the necessary return to service examinations. Claimant

after successfully passing this probationary period may have his Foreman rights restored. Said one year status will not deprive Claimant of any of his schedule agreement contractual rights.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award within thirty (30) days of date of issuance shown below.

A. D. Arnett
A. D. Arnett, Employee Member

G. C. Edwards
G. C. Edwards, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member