

PUBLIC LAW BOARD NO. 1838

Award No. 56

Docket MW-PO-79-41

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement of Claim Claim is made to restore Claimant E. L. Brown to service of Norfolk and Western Railway.

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, an Extra Gang Laborer, during his work tour on November 7, 1979, requested his supervisor to let him off work at 12:30 PM. He again made the same request at 1:00 PM. Each such time Claimant was advised that he could not be spared from the job and that he should continue working. Claimant reiterated his request to take the afternoon off on the basis that he had important personal business to do. He was advised that he could take the time off.


Subsequently, about 2:00 PM, Claimant was observed climbing


in the back seat of a yellow Oldsmobile and, apparently went to sleep. He was observed again about 4:00 PM as still being on the property. Claimant was advised in writing, under date of November 8, 1978, by the Assistant Roadmaster that he was being dismissed from all service with Carrier, effective 3:00 PM, November 7, 1979, for being dishonest with the Supervisor in order to avoid performance of his duty and for sleeping on company property.


An investigation was requested and granted. As a result thereof it was concluded that the investigation held on December 10, 1979 supported Carrier's conclusion of his dismissal as stated in the letter of November 8, 1979.

The Board finds that Claimant was accorded a fair hearing, that he was found guilty based on substantial, credible and competent evidence and that the discipline assessed was, in the circumstances, not unreasonable. This Claim will be denied.

Award Claim denied.


A. D. Arnett, Employee Member


E. N. Jacobs, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member