PUBLIC LAW BOARD NO. 1838

Award No. 68

Case No. 68
Carrier File MW-BL-81-210

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

Statement of Claim: Former employe J. T. Wilson, 315 Orange St., Bluefield, WV 24701, was dismissed account of allegedly charged with gasoline theft on April 27, 1981, and April 28, 1981. Employes request Mr. Wilson be reinstated and be paid for any and all time lost, his seniority rights, vacation rights, and all other rights unimpaired beginning May 4, 1981.

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.

On May 4, 1981, Claimant was advised he was dismissed from all service of the Carrier as a result of his unauthorized removal and possession of gasoline taken from company vehicle No. 1644 on April 27 and April 28, 1981.

An investigation was requested pursuant to Rule 33, and was held on June 4, 1981. As a result thereof Claimant's dismissal was reaffirmed.

Organization advances the appeal on the grounds that there was no conclusive proof developed at the investigation to support Carrier's conclusion, and that Carrier's actions were arbitrary, capricious and excessive.

The testimony developed at Claimant's hearing disclosed more than one witness observed Claimant remove gasoline from a company vehicle. Although some of the witnesses could not conclusively state that Claimant "stole gasoline", or actually removed it from the vehicle in question on the specific dates, virtually all of the witnesses testified that they observed Claimant either with a gas can, a siphon hose, or with both in the vicinity of the truck from which gas was being removed. That testimony combined with the observation of two witnesses who observed Claimant actually taking the gasoline, and the testimony of Claimant's foreman to the effect that the particular vehicle in question was using 15 6/10ths gallons to go less than a mile created circumstances that mandated an explanation by Claimant.

Claimant, on his own behalf, denied ever stealing any gasoline, denied the use of the gasoline in his own vehicle, as alleged by Carrier's witnesses, testifying that his vehicle used a different type of gasoline than that which was required by Carrier's vehicles. Claimant's explanation for his admitted possession of a siphon hose, at best, flies in the face of common sense or reason. Carrier chose to disregard same and relied upon the credibility of its own witnesses.

The Board does not sit as the trier of facts. We are confined to review the record to determine if sufficient credible evidence was adduced at the hearing to support Carrier's conclusion, and whether or not Claimant was afforded his procedural rights therein. In that regard we are satisfied that Carrier has fully met its burden. We cannot conclude from the record of the instant claim that Carrier's actions were arbitrary or capricious, and particularly in view of the

seriousness of the offense, that the discipline was excessive. Therefore, we must conclude that the claim be denied.

AWARD: Claim denied.

Bryce Hall, Employee Member

J. A. Abbatello, Jr., Carrier Member

A. Thomas Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, March 26, 1984