

PUBLIC LAW BOARD NO. 1760

Final Award No. 107

Docket No. 107
N&W File MW-DEC-89-1

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company
(Former Wabash)

Statement
of Claim: Claim on behalf of R. L. Odle requesting that he be reinstated and paid for all time lost as a result of his dismissal assessed following a January 5, 1989 investigation in which he was charged with violation of Norfolk Southern Safety and General Conduct Rule GR-12.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

Claimant Machine Operator was assigned with four other employees as brush cutter operators. Claimant, on January 9, 1989, brought a .357 Magnum hand gun onto the property. He showed it to the employees with whom he worked. Before leaving for the job site the gun was wrapped in a sleeping bag and placed in the trunk of Mr. Stanley's vehicle.

Following work that day several of the employees, including Messrs. Stanley and Odle, went to a nearby bar and consumed several beers. Mr. Barr returned to the trailer first and went to sleep. Some time later, after having continued their drinking at another bar, Messrs. Thompson and Odle returned to the trailer. Although the precise details are unknown, within a few minutes of their return employee S. N. Thompson used Claimant's hand gun to inflict a fatal gunshot wound to his head.

Claimant was removed from service, and cited to a formal investigation on the charge of violating Norfolk and Southern Safety and General Conduct Rule GR-12 reading:

"Employees are prohibited from having loaded or unloaded firearms in their possession while on duty or on company property except security and forestry officers authorized to do so in the performance of their duties or those given special permission in writing by the Head of Police and Special Services."


Claimant was accorded the due process to which entitled under Rule 30. His removal from service pending investigation was proper. There was a clear violation of Rule GR-12.


There was sufficient evidence adduced, including Claimant's admissions, to support Carrier's conclusions of Claimant's culpability of violation of Rule GR-12. But for Claimant Odle having violated the safety intended Rule GR-12 Mr. Thompson would not have been able to kill himself. That fatal fact demonstrates the very reason why the Carrier is so adamant in its prohibition of firearms on the property. Firearms, by their nature, are extremely dangerous. They have no business being on the property.

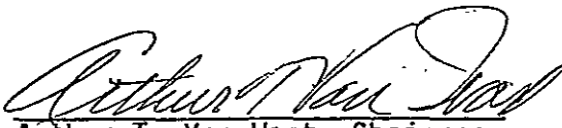
Notwithstanding, the Board finds that Claimant's good record and years of service are such that the length of time out of service may well have caused the magnitude of Claimant's violation to sink in and thus will help to make him a better employee. Claimant will be returned to service with all rights unimpaired but without pay for time out of service subject of course to taking a physical examination.

Award: Claim disposed of as per findings.

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


S. A. Hammonds, Employee Member


L. F. Miller, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued February 23, 1990.