

PUBLIC LAW BOARD NO. 1760

Award No. 133

Docket No. 133

Carrier File MW-DECR-90-75-BB-575

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railroad Company
(former Wabash)

Statement

of Claim: Claim on behalf of Bridgetender M. M. Jones requesting reinstatement and pay for time lost as a result of his dismissal for conduct unbecoming an employee and violation of General Safety Rules GR-17, GR-6, and 1028 of the Norfolk Southern Safety and General Conduct Rules in that on Sunday, November 11, 1990, he defaced the Valley City Bridge and gave false information concerning the incident.

Findings: The Board has jurisdiction by reason of the parties Agreement establishing this Board for that purpose.

Claimant Bridgetender, M. M. Jones, following a formal investigation held on December 5, 1990, was advised on December 18, that:

"You were charged with conduct unbecoming an employee and failure to comply with General Safety Rule GR-17, GR-6 and 1028 of the Norfolk Southern Safety and General Conduct Rules in that on Sunday, November 11, 1990, you defaced the Valley City Bridge, MP DH473.8 and also gave false information when asked your knowledge or participation concerning the above.

I have read and reviewed the investigation and I find the evidence presented clearly substantiates your guilt as charged. You are hereby dismissed from all services with the Norfolk and Western Railway."

The Claimant was accorded the due process to which entitled under Rule 30. It would be highly improper, predicated on the facts of this case, to assume that the disloyal act of defacing company property in an insulting and derogatory manner and providing false information thereon, as well as the Claimant's assertion that if he lost time as a result of discipline he would fake an injury, to deem such acts as minor offenses. Notwithstanding, the Union's objection must be respected. Carrier should be ever vigilant and not abuse the exercise of its agreed upon right to remove Claimant from service for other than "minor" matters.

The investigation subsequently upheld management's judgment that the other bridgetenders, who were questioned by their Foreman, and Mike Jones' admissions of guilt to his supervisors, eliminated the need for their presence at the hearing and their absence does not provide a basis for concluding unfairness or partiality. The Board finds that there was no error so egregious as to be cause for reversal of the discipline imposed.

There was sufficient evidence adduced to support the Carrier's conclusion of culpability as to the charges placed against the Claimant. The evidence clearly showed, despite the Claimant's effort to put the blame on another Bridgetender, that he, in fact, was the one who had defaced the bridge by painting the graffiti expression of "N&S sucks" on the beam thereof, in letters 12-18 inches high. That public derogative statement was a direct violation of Rule GR-17 which prohibits defacing company property. It also violated Rule GR-6 by not devoting himself exclusively to the Company's service while on duty. Rule 1028, of course, prohibits horseplay and practical jokes as well as the type of conduct demonstrated by the Claimant's handy work.

The discipline viewed in light of the offense, the Claimant's conduct in connection therewith, and his service record, which indicates that this is the fourth disciplinary offense and that the Claimant had been dismissed before for failure to properly perform the duties of a Bridgetender and for excessively delaying river traffic, is deemed to be not unreasonable. This claim will be denied.

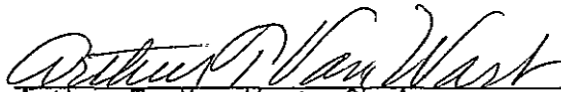
Award: Claim denied.



S. A. Hammon Jr., Employee Member



E. F. Miller, Jr., Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member