

PUBLIC LAW BOARD NO. 1760

Award No. 134

Docket No. 134

Carrier File MW-DECR-90-81-LM-638

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

Statement

of Claim: Claim on behalf of H. G. Ivy requesting that he be paid for the 30-days suspended from service from February 4 through March 5, 1991 as a result of an investigation held on January 10, 1991 in which he was charged for failure to protect his assignment as a foreman on Extra Gang 103 on December 18 and 21, 1990.

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

 The Claimant was the Foreman of Extra Track Gang 103. He has been employed by the Carrier for some 15 years. He was notified by his Track Supervisor to attend a formal investigation on January 10, 1991 in connection with:

"Your failure to protect your assignment as Foreman on Extra Gang 103 on December 18 and 21, 1990."

 Thereafter, Assistant Division Engineer advised the Claimant as follows:

"This refers to formal investigation held January 10, 1991 to determine your responsibility in connection with your failure to protect your assignment as Foreman Extra Gang 103 on December 18 and 21, 1990.

Based on the facts brought out in a formal investigation, you are hereby assessed thirty (30) days actual suspension. This suspense will start on February 4, 1991 and end March 5, 1991. You will be expected to protect your assignment on March 6, 1991."

 The transcript of the investigation was somewhat revealing. It revealed that the date in the letter of charge was wrong. After the payroll was reviewed, it showed that the Claimant actually worked on Wednesday the 19th and that on Friday the 21st he had come in extremely early and that he had told Mr. Golliday, a Section Laborer in Gang 105, who, apparently, told Truck Driver John Anderson who in turn told Supervisor O'Neil before 7:00 AM that the Claimant

was not going to work. The Assistant Division Engineer concluded from the transcript that the Claimant was neither guilty nor innocent but based on the facts brought out he was going to suspend him for 30 days.

The worst conclusion that may be drawn from the record developed was that the Claimant having been given the instructions on December 20 failed to follow the stricture of those instructions and as a Foreman he should be well aware. The Claimant's 30 days is deemed to be excessive, the punitive, and it is reduced to five days.

The Claimant received the due process to which entitled. The Carrier had abused its right to discipline and the discipline was modified accordingly. In fifteen years of service, the Claimant had only one incident for which he served time, five days for failing to protect his assignment. Here the Claimant, for reasons best known to him, had complied with the spirit but not the letter of the required procedure.

Award: Claim disposed of as per findings.

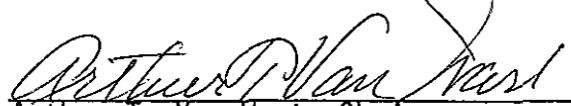
Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.



S. A. Hammon, Jr., Employee Member



L. F. Miller, Jr., Carrier Member



Arthur I. Van Wart, Chairman
and Neutral Member