

PUBLIC LAW BOARD NO. 1760

Award No. 150

Case No. 150
File MW-DECR-93-02

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

Statement

of Claim: Claim on behalf of R. Battle requesting that he be reinstated to service and paid for time lost, as a result of his dismissal from all service following formal investigation held on April 16, 1993, in connection with his being observed in violation of Rule G.

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

The Claimant, R. Battle, on February 8, 1993, was regularly assigned as an anchor adjusting machine operator on a rail transposing gang. Other gang members were unable to awaken Claimant on the morning of February 8th in order to begin the day's work. That fact was reported to the Track Supervisor. The Track Supervisor and the Assistant Track Supervisor went to the Claimant's camp trailer about 1:30 in the afternoon. They found him sitting on the edge of the bed. The Claimant advised that he was sick. When asked why, he told them he had been drinking the night before and that he was not in any shape to go to work. The two supervisors asserted that they could smell alcohol from the Claimant.

The Claimant was notified to attend an investigation on the charge:

"For the incident on February 8, 1993 at approximately 1:30 PM in the camp car located at Federal Yard, you were observed to be in violation of Operating Rule G of the Norfolk Southern Operating Rules."

As a result of the investigation, Carrier concluded culpability of the charge. The Claimant was dismissed from service as discipline therefor.

Rule G reads:

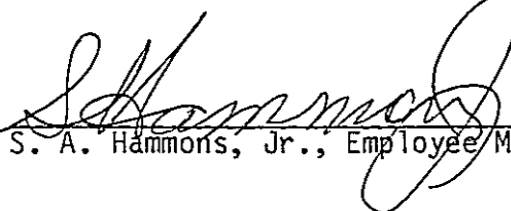
"An employee who reports for duty under the influence of alcohol or other intoxicant, cannabis in any form, amphetamine, a narcotic drug, a hallucinogenic drug, any

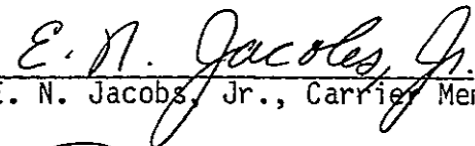
controlled substance, as defined by Federal law, or a derivative or combination of any of these or who uses any of the foregoing while on duty, will be dismissed. Possession of any of the foregoing while on duty, or possession, use, or being under the influence of any of the foregoing while on company property, or occupying facilities provided by the company, is prohibited."

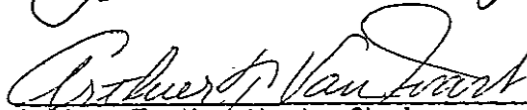
The Board finds that there are circumstances that serve to mitigate the discipline accorded Claimant. The Board will conditionally reinstate Claimant to service with all rights preserved but without pay for the time out of service subject to his entering and successfully passing the DARS program and thereafter being placed in a probationary status for one year's basis. During this period he will have the right to be protected under his discipline rule. If the Claimant does not accept this understanding within 30 days of being notified therefor and act thereon, the claim will be then denied and the Claimant will remain dismissed.

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. Hammons, Jr., Employee Member


E. N. Jacobs, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued July 30, 1994.