

PUBLIC LAW BOARD NO. 1760

Award No. 43

Case No. 43

Docket No. MW-STL-81-8

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company (Former Wabash Railroad)

Statement

of Claim: Appeal of dismissal of D. R. Girtman as a result of investigation held on December 9, 1981, and requesting that he be reinstated and paid his respective rate for all time lost.

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 February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, a Weedmower Operator in Carrier's St. Louis Terminal, was relieved of his duties effective 9:00 AM, Tuesday, November 3, 1980 for the theft of gasoline on October 26 and 29, 1981 and for failure to protect his assignment on October 26, 28 and 29, 1981.

Claimant requested and was granted a formal investigation which was finally held on December 9, 1981 on the charge of theft of gasoline and failure to protect his assignment. As a result thereof, Claimant was advised under date of December 21, 1981 that the charges had been upheld and that the dismissal would stand.

The Board concludes that Claimant was accorded the due process to which entitled under his Rule 20 - Discipline and Grievances. He was properly notified, very capably represented, was afforded the right to present witnesses and he exercised his right of appeal.

There was sufficient credible and competent evidence adduced to support the conclusion reached by Carrier as to Claimant's culpability. We do not substitute our judgement for that of Carrier. Here, Claimant

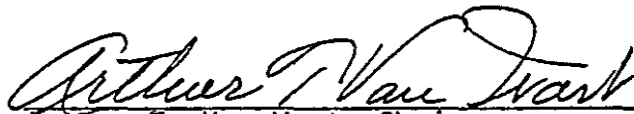
had been observed by two N&W police officers as to the charge of gasoline theft and by one Assistant Engineer as to his failure to properly protect his assignment. Their testimony was not shaken or shown to not be credible.

In view of Claimant's record, which included a 53 day actual suspension for aiding and abetting his foreman in the unauthorized possession and use of company gasoline, the Board finds that the discipline imposed in this case was not unreasonable. This claim will be denied.

Award: Claim denied.


M. A. Christie, Employee Member


S. C. Lyons, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued May 13, 1983.