

PUBLIC LAW BOARD NO. 1760

Award No. 55

Case No. 55

Docket NW-MOB-74-23

Parties	Brotherhood of Maintenance of Way Employees
to	and
Dispute	Norfolk and Western Railway Company (Former Wabash)
Statement of Claim	Claim on behalf of former Crane Operator P. M. Saunders that he be reinstated to service with all rights unimpaired and that he be compensated for all time lost as a result of an investigation held on December 21, 1981.

Findings: The Board, after hearing upon the whole record and 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 Machine Operator with 13 years service, was notified by the Division Engineers-Construction, under date of January 8, 1982:

"Results of investigation held in this office December 21, 1981, determining your responsibility in connection with your being on company property December 4, 1981, in an intoxicated condition at which time you exhibited conduct unbecoming an employee in violation of Rule G and Rule 1712 of Norfolk and Western Railway Company's Safety Rules and Rule of General Conduct, clearly substantiated your responsibility.

Accordingly, you are hereby dismissed from all further service with the Norfolk and Western Railway Company effective with date of December 7, 1981, this being the date you were removed from service for these violations.

/s/ J. E. Trick
Division Engineer-Construction"

The Employees instituted an appeal therefrom on February 11, 1982. The initial appeal was denied. After it was handled in the usual manner and resulted in no change in the adverse decision, the Employees appealed said Case to this Board.

The record reflects that, subsequently, Claimant, on his own initiative instituted a proceeding in another forum, to wit - The Missouri Commission on Human Rights. A Settlement Agreement, in Case Number E-2/82-2443, was reached between the parties thereto, i.e., Claimant and Carrier signed April 27, 1983 and May 6, 1983, respectively, as the Complainant and the Respondent. The part thereof pertinent read:

"2. In exchange for the promises of Complainant and the Missouri Commission on Human Rights contained in paragraph 1 of this agreement, Respondent agrees:

- a. Not to discriminate against any person because of opposition to any practices forbidden under Chapter 296 RSMo, 1978 or because of filing a complaint, testifying or assisting in any proceeding under the law.
- b. Complainant will enter Respondent's Alcohol Rehabilitation Services Program and at the time Complainant successfully completes said program and upon the recommendation of Complainant's counsellor, Complainant will be immediately returned to duty in a comparable job in the same seniority district with all rights unimpaired, subject only to passing the usual physical examination.

3. This Settlement Agreement shall operate as the complete and final disposition of said complaint, subject only to the fulfillment of the foregoing provision."

It is a matter of common sense and sound labor relations policy, as well as a general legal, arbitral and public principle, that unnecessary or frequent litigation and/or forum shopping should be discouraged.

Otherwise, among other things, a Complainant would be permitted "more than one bite of the apple".

In the instant case the discipline imposed was cumulative in nature. It included therein the lesser included offense charged against Claimant.

Claimant's action and agreement in the settlement cited hereinabove is deemed to have made the instant case moot. He therein agreed that he has a "problem" and agreed to the means as to its possible resolution.

Consequently, the instant case will be dismissed without prejudice to the respective positions of the parties.

AWARD: Case No. 55, as per findings, is dismissed without prejudice to the positions of the parties.


M. A. Christie, Employee Member


S. C. Lyons, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued June 27, 1984