

PUBLIC LAW BOARD NO. 1760

Award No. 80

Case No. 80

Docket No. MW-STL-85-14

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company
(Former Wabash)

Statement

of Claim: Claim on behalf of Laborer D. S. Powell for pay for time lost account a thirty day actual suspension as a result of a formal investigation held December 18, 1985.

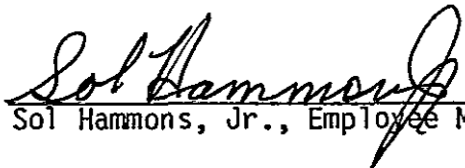
Findings: The Board has jurisdiction of this case.


Claimant Laborer, was assigned to Section Gang 102. Gang 102 and Gang 103 assembled at Ferguson, Missouri on November 1, 1985 before 7:00 AM for their daily working assignments. Because of a derailment at Wensville, Section Gang 103 was instructed to proceed there with a full compliment of five men and, if there were any vacancies in the gang, that they were to be filled from Gang 102. There were two vacancies. Claimant as the junior employee, was assigned. He refused the order, asserting that he did not wish to work in the rain and, after talking with the Roadmaster, Claimant refused again, on the grounds that he needed to be home to let his children into the house after school. After a third such order was refused Claimant was removed from service for the day.

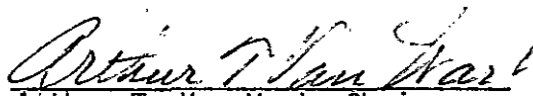
He was notified to attend a formal investigation on the charge of insubordination. Claimant was concluded to be guilty. He was given the discipline here appealed. Claimant was furloughed and the discipline was not to be executed until he had been recalled to work.

That Claimant later had changed his mind and wanted to work does not alter the nature of the violation. In the circumstances, the Board reluctantly refuses to place itself in Carrier's shoes. The claim will be denied.

Award: Claim denied.


Sol Hammons, Jr., Employee Member


J. Abbatello, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued June 9, 1988.