

PUBLIC LAW BOARD NO. 1760

Award No. 90

Case No. 90

File MW-DEC-84-68

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

Statement

of Claim: Claim on behalf of J. P. Spalding requesting reinstatement and pay for time lost appealing his dismissal for conduct unbecoming an employee and violation of Rule G.

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

Claimant Gang Foreman, on July 20, 1988, arrived at the Decatur yard office, talked with the Assistant Roadmaster, about 5:40 AM, and requested that he needed the day off as his wife had stolen his car. He was advised that his services were needed but in view of Claimant's, apparent, upset erratic behavioral condition he was permitted to leave. Upon leaving the property driven by the Machine Operator who had driven him to work, Claimant instructed said driver to take him to his mother-in-law's house in order to get his vehicle back.

After arriving at the house of his mother-in-law, the Claimant proceeded to the front door with a gun wrapped in a rag. The occupants would not allow the Claimant to come inside so he proceeded to the back of the house. An altercation subsequently ensued. The Claimant discharged the weapon and a bullet struck a female located in the house. Claimant instructed the Machine Operator who had driven him there to leave as someone had been shot.

The City Police were dispatched to the premises and when they arrived they arrested Claimant on the charges of reckless conduct, unlawful use of a weapon and having no firearm permit. The Claimant was booked and released on bond with a court date set for August 22, 1988.

Claimant requested the Division Engineer to grant him one week's vacation immediately effective on July 21, 1988. The Supervisor advised Claimant that his request would be granted. However, he was instructed to submit to a urinalysis test. The test results were positive for marijuana.

Claimant was notified to attend an investigation to determine his responsibility for conduct unbecoming an

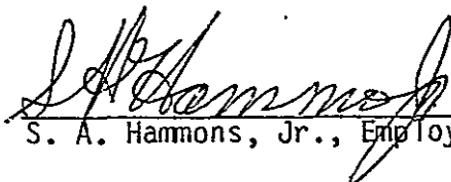
employee, for leaving company property in a company vehicle and proceed to a residence with a firearm in his possession and discharging the firearm. He also was cited as being in violation of Rule G as a result of the urinalysis test. As a result of the formal investigation, Carrier concluded therefrom that Claimant was guilty of conduct unbecoming an employee and Rule G. He was dismissed from service as discipline therefor.

Claimant was accorded the due process to which entitled under his discipline rule. That he was held out of service, particularly in the circumstances involved here, cannot be deemed other than a major offense which is permitted under the rule.

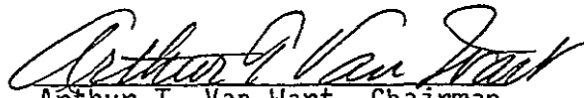
There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability of the charges placed against him.

The discipline is deemed reasonable. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


L. F. Miller, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued August 14, 1989.