

PUBLIC LAW BOARD 1837

CASE #17

Award 17

(MW-MUN-77-25)

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
vs  
Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. Carrier violated the effective agreement dated February 1, 1951, on January 7, 1977, when it dismissed Claimant A. P. Hull from service.

2. The dismissal of the claimant was excessive, capricious, unwarranted and unjustified. The claimant should now be restored to service with seniority unimpaired and payment allowed for the assigned working hours actually lost, less any earnings in the service of the company.

FINDINGS: This Board upon the whole record and all the evidence finds that:

The carrier and employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as amended.

This Board had jurisdiction over the dispute involved herein.


OPINION:

The Carrier terminated the Claimant over his refusal to carry out an order to load a water cooler on the personnel bus. According to the record, his refusal to do so was apparently not accompanied by belligerence on his part, merely a refusal couched in a question as to why some other employee could not do so. This Board hews to the principle that discipline should be corrective and might well have considered an

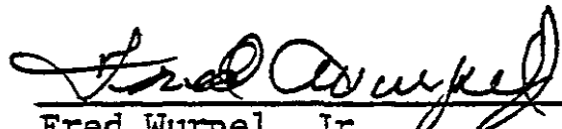
explanation by the Claimant as to why he was not in error, or some indication of contrition on the part of the Claimant as a basis for reinstatement; however, we find no such option available given the Claimant's own disinclination to appear in his own behalf, although he was apparently properly notified to do so. We find, as commendable, the Organization's earnest efforts to gain for the Claimant that which he apparently was disinterested in doing for himself; however, we conclude that lack of the Claimant's own resolve in this regard is sufficient basis in supporting the Carrier's decision to remove.

AWARD:

Claim is denied.

  
James F. Searce  
Neutral Member

  
G. C. Edwards  
Carrier Member

  
Fred Wurpel, Jr.  
Organization Member

Dated this 28<sup>th</sup> day of April, 1980 at Atlanta, Ga

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