

PUBLIC LAW BOARD 1837

CASE #18

AWARD 18

(MW-MUN-77-29)

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM:

1. The Carrier violated the effective agreement dated February 1, 1951 when, on March 29, 1977, the claimant D. E. McCullough was dismissed from service with the Carrier.

2. The dismissal of the claimant was capricious, unjust, unwarranted, and the investigation was not held in compliance with the agreement. 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.

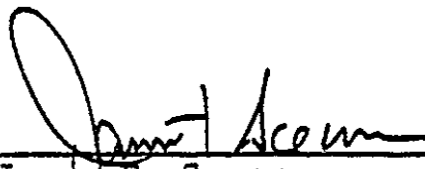
OPINION:

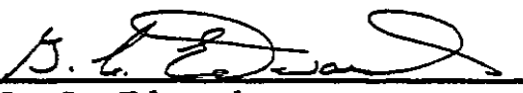
The threshold question for this Board to address is whether or not the merits of the case are properly before it. The record indicates that, at the Claimant's initiative, the Third Division of the Adjustment Board twice entertained the merits issue as an "MS" case. The first time the dispute was withdrawn from that august body and returned to the property at the behest of the Claimant. The second time it was docketed (as MS-22410) again at the Claimant's request and disposed of by Award No. 22330. The Organization

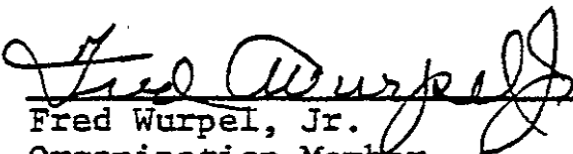
now proposes consideration by this Board of the same circumstances addressed by the Third Division. We shall respectfully refuse to do so; the Claimant has received due consideration of his grievance before a proper forum; we shall not now afford him a second opportunity.

AWARD:

The merits of this case are not properly before this Board; Claim is dismissed.


James F. Searce
Neutral Member


G. C. Edwards
Carrier Member


Fred Wurlpel, Jr.
Organization Member

Dated this 25th day of April, 1980 at Atlanta Ga

AWD -18, 1837