

PUBLIC LAW BOARD 1837

CASE #19

Award 19

(MW-BVE-77-17)

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 April 1, 1951, on March 14, 1977, when it dismissed Claimant Rayfield James from service.

2. The dismissal of the claimant was unwarranted, unjust and not based on proven facts. The claimant should be restored to service with seniority unimpaired, and payment allowed for the assigned working hours actually lost while out of service of the railroad, at not less than the rate for the position formally held or for the difference in the rate earned if in or out of the service.

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.

OPINION:

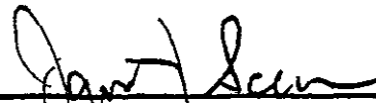
Removal of the Claimant was effected over his refusal to obey an order to load a keg apparently containing bolts weighing some 20-25 lbs. The situation apparently deteriorated into the use of uncomplimentary, profane or vulgar language by the Claimant and possibly by the supervisor issuing the order. It was further compounded by a purportedly


combative gesture by the Claimant toward the supervisor, although it is clear no blows were struck. The Organization takes exception to the assertion that the Claimant's actions were insubordination and that the hearing was flawed by irregularities. We find no basis to affirm any improprieties in the hearing and are satisfied that the Claimant was guilty of poor judgment. As a four-year veteran of service he should have been fully aware of his obligation to carry out a reasonable order. The record sufficiently demonstrates that he "assumed" the keg was beyond his ability to lift without ascertaining the correctness of such an assumption and thereupon commenced a series of events that lead to his dismissal. While we take serious issue with his offensive gesture, we shall give him the benefit of the doubt that he would not have followed through. The four years of service are the basis upon which we shall order him returned to service, without back pay but with his seniority intact. This assumes his ability to pass a fitness for duty examination and presumes he has gained wisdom from these events.

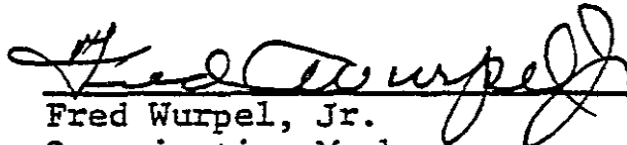
AWARD:

Agreement was violated and claim is upheld to the extent set out in the Opinion.

AWD-19, 1837


James F. Searce
Neutral Member


G. C. Edwards
Carrier Member


Fred Wurpel, Jr.
Organization Member

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