

BEFORE PUBLIC LAW BOARD NO. 1837
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
AND
NORFOLK AND WESTERN RAILWAY COMPANY

Award No. 85

STATEMENT OF CLAIM: Claim of the Brotherhood that:

Claim on behalf of M. L. Showalter requesting that he be reinstated and paid for time lost, as a result of his dismissal from service following investigation held on January 21, 1994, in connection with conduct unbecoming an employee by misappropriation of Company fuel.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and this board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier rules when he drove his personal vehicle up to the Carrier fuel pump and pumped gas into it. Claimant admitted to having taken the Carrier fuel.

Once this Board has determined that there is sufficient evidence in the record to

support the guilty finding, we next turn our attention to the type of discipline imposed.

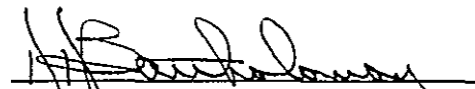
This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary or capricious.

Given the Claimant's good disciplinary background and his record of service, this Board finds that the dismissal shall be reduced to a lengthy suspension. The Claimant shall be reinstated but without backpay.

AWARD

Claim sustained in part. The discharge of the Claimant is hereby reduced to a lengthy suspension. He shall be returned to service without backpay.



Peter R. Meyers
Neutral Member

D. D. Bartholomay
Organization Member

DATED: 12-22-94



E. N. Jacobs, Jr.
Carrier Member

DATED: December 15, 1994