

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

Statement of Claim The Brotherhood request that Section Laborer J. W. Walton be restored to service of the Norfolk and Western Railway Company, with vacation, seniority and all other rights unimpaired and that he be paid for all time lost as a result of being dismissed.

Findings The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant was relieved from service as a result of his habitual absenteeism, the most recent incident being July 12, 1977, and for his alleged insubordination towards a Supervisor on July 11, 1977. A formal investigation was held in connection therewith on August 5, 1977. As a result of that investigation Carrier concluded that Claimant was guilty as charged. He was dismissed from service as discipline therefor.

The Board finds that Claimant was accorded a fair hearing pursuant to Rule 33 - Discipline and Grievances.

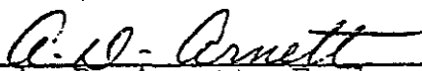
The Board also finds that while there was sufficient evidence adduced to support Carrier's conclusion as to Claimant's absenteeism, it must conclude that the charge of insubordination

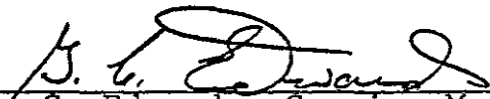
was more technical than factual.


The Board further finds that there are circumstances which serve to mitigate the discipline imposed. Claimant had undergone a prolonged period of illness which should have been taken into consideration. The Board will therefore reinstate Claimant with all rights unimpaired but without pay subject to passing of the usual return to service physical examination and that Claimant and his Union Representative meet with Carrier's designated Representative for the purpose of reviewing Claimant's absentee record, Rule 26 of the Maintenance of Way Agreement and Operating Rule 404 in order that Claimant will clearly understand his obligations thereunder. This will accord Claimant his "last chance" opportunity to work for Carrier, but to do so he must protect the requirements of his service.

Award Claim disposed of as per findings.

Order Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.


A. D. Arnett, Employee Member


G. C. Edwards, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, November 26, 1979.