

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim The Brotherhood requests that Laborer M. J. Venturino be restored to service of Norfolk and Western Railway Company, with vacation, seniority, and all other rights unimpaired and that he be paid in full 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 dismissed from service effective August 9, 1977 as a result of alleged insubordination in refusing to perform the duties assigned him by his foreman and using profane language towards his foreman, on August 8, 1977.

The Board finds that Claimant was properly handled pursuant to Rule 33 - "Discipline and Grievances, that there was sufficient evidence adduced at the formal investigation held on August 16, 1977 to support the conclusion reached by Carrier as to Claimant's culpability concerning the charges placed against him, and that the discipline was not unreasonable.

Here, Carrier, as the trier of the facts determined the credibility of the witnesses and resolved the conflicting

testimony. We find that the record is such that it does support the conclusion reached by Carrier. Carrier was not arbitrary nor capricious in the exercise of its discretionary right. In view of the seriousness of the offense the discipline assessed is held to be neither harsh nor unreasonable. This claim will be denied.

Award Claim denied.

A. D. Arnett  
A. D. Arnett, Employee Member

G. C. Edwards  
G. C. Edwards, Carrier Member

Arthur T. Van Wart  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Wilmington, Delaware, November 26, 1979.