

PUBLIC LAW BOARD NO. 1838

Award No. 24

Case No. MW-RO-78-100

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim Claim on behalf of Mr. Billy J. Nugent for reinstatement and pay for time lost as a result of his dismissal from service effective November 18, 1977.

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, on November 17, 1977, was employed as a Utility Helper, at Carrier's Welding plant in Roanoke, Virginia, 3:20 PM to 11:50 PM. Said plant produced welded rail on a two shift per day basis.

The welding line foreman was instructed about 4:00 PM that it would be necessary to work two or three hours overtime in order to insure that the rail train would have sufficient rail to leave Roanoke the following day. When said Foreman so advised his men Claimant told him, "I will be sick, I will not work". While Claimant continued working, he did, however, leave the property about 12:05 AM. As a result thereof an impairment and delay in the efficiency of the plants operation occurred necessitating the shutting down of the said crew by sending a

man to replace Claimant in the welding operation.

Claimant was dismissed from service as a result thereof. An investigation in connection therewith was requested and granted. It was held December 14, 1977. Carrier concluded therefrom that Claimant's dismissal should be upheld.

The Board concludes that Claimant was accorded a fair hearing.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant being guilty as charged. He worked only 15 minutes overtime.

Absent a pressing reason for Claimant's leaving the plant, there is no basis for disagreement with Carrier's conclusion as to Claimant's guilt.

We agree with Third Division Award 21083 (Bailer) which therein held:

"The evidence is clear that Claimant declined to comply with a supervisor's instructions to remain on duty two hours beyond his regular quitting time for the purpose of performing certain additional work on an overtime basis. Claimant understood these instructions. There were no circumstances sufficiently mitigating to excuse this insubordinate conduct. We are unable to say that Carrier abused his discretion by assessing the penalty of dismissal."

While the Board will deny this claim it does so with the advice that the denial Award herein should not estop Carrier from granting leniency to Claimant, if so desires. We recommend that consideration be so given thereto.

Award            Claim denied as per findings.

A. D. Arnett

A. D. Arnett, Employee Member

B. C. Edwards

G. C. Edwards, Carrier Member

Arthur T. Van Wart

Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Salem, New Jersey, December 27, 1979.