

PUBLIC LAW BOARD NO. 1838

Award No. 55

Docket MW-PO-79-4

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim Claim is made to restore J. E. Johnson to service with vacation, seniority and all other rights unimpaired and that he be paid for all time lost until returned to service at his applicable rate of pay.

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 laborer, on May 15, 1979, was working as a Laborer on R-4 Rail Gang. On May 15th the Foreman of R-4 Rail Gang informed the Gang that transportation was provided for them from their headquarters at the camp cars to the job site.

About 9:00 AM the Assistant Manager Roadway Maintenance, E. W. Parks, Jr. was standing on a Clamshell, which had broken down, talking with the Operator of the machine concerning the problem. He was accompanied by the Assistant Roadmaster, G. W. Haroutunian. Claimant approached and climbed up on the deck of said Clamshell and asked

Mr. Parks why he (Claimant) could not drive his van to the job as he had in the past. Claimant informed Mr. Parks that he didn't live on the Campcar, that he slept in his van, and that he should be allowed to drive his van. The Assistant Manager of Roadway Maintenance informed Claimant that he was assigned to the Rail Gang with his headquarters at the Campcar and that he would ride the bus to and from the job. Claimant, at this point, allegedly started cursing and, apparently, took out a pocket knife from his pocket. He was thereupon removed from service for his insubordinate actions.

Thereafter, he was advised, in writing, that he had been dismissed from service at 9:20 AM, May 15, 1979 for insubordination. As a result of his request for an investigation such was granted and held. Claimant was thereafter advised that his dismissal was upheld.

The Board finds that Claimant was accorded a fair hearing.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant being insubordinate.

We find no cause in the record to permit a modification of the discipline assessed. In the circumstances this claim is denied.

Award . Claim denied.

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

E. N. Jacobs, Jr.
E. N. Jacobs, Jr. Carrier Member

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