

Award No. 63

Case No. 61

Carrier File MW-PO-80-35

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim Claim is made that Claimant K. R. Salmons be reinstated to service of Norfolk and Western Railway and paid for all lost time, with vacation, seniority and all other rights unimpaired citing Rules 33 and 35 of the Current Maintenance of Way Agreement as support of this claim.

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 Salmons was initially employed by Carrier as an Extra Gang Laborer on July 6, 1978. On August 12, 1980, at approximately 2:00 AM, Claimant left the camp cars and went home. On August 13, 1980 Claimant contacted Jerry Foster, a Roadmasters' Clerk, at approximately 11:30 AM to advise that he off sick from the T-4 Tie Gang.

Under date of August 25, 1980, Claimant received a notice which, in pertinent part, read:

"You are hereby notified to report to the Office of the Division Engineer - Maintenance, Third Floor, Division Office Building, Portsmouth, Ohio, on Friday, August 29, 1980 at 9:00 AM for a formal investigation to determine your responsibility in connection with your dismissal August 15, 1980, account your continued violation of Rule 26 (being absent without permission) of the current Maintenance of Way Agreement, most

recent being Wednesday, August 13, 1980..."

The investigation was held pursuant to the applicable schedule rules, and, as a result thereof, Claimant's dismissal was upheld.

The Board has read the transcript of the investigation and finds that Claimant was ably and aggressively represented, that there exists ample proof, including Claimant's own admissions to the charges that he was absent without permission, to support the charge of continued violation of Rule 26. There but remains the issue of the appropriateness of the discipline.

Dismissal is the ultimate penalty that an employee can experience at the hands of an employer. Claimant herein admittedly was absent without permission, notwithstanding his protestations that he felt ill and needed to get home. Nor was his excuse palatable concerning his prior absences for which he received ample counselling (as well as a thirty (30) day actual suspension received by Claimant not sixty (60) days prior to this incident).

Carrier's have an unqualified need to have employees give prompt and faithfulness attendance to their work schedules. To be otherwise would create a chaotic and wholly unmanageable situation for an employer. As was stated in Second Division Award No. 2066, in pertinent part:

"The subject of discipline should never be treated lightly. It is a subject which this Board must consider quite frequently. We recognize the need for discipline to maintain order, safeguard lives and property, and to assure a patent of general efficiency.

As we regard the subject of discipline, it should be considered from the standpoint of reasonable effectiveness. Punishment of the violator should be a degree compatible with the seriousness of the violation.

The purpose of discipline is two-fold--to punish the violator and to point out to other employees the seriousness of the violations."

In reviewing the record the Board finds that the discipline imposed was appropriate to the continued course of behavior manifested by Claimant. However, in view of the short term of Claimant's service prior to his discharge, the Board feels that the discipline should be modified at this posture. Claimant has had ample opportunity to reflect upon the kind of service required of him by his employer. Claimant sought to explain his prior absenteeism to the Board by stating that he was experiencing a great deal of domestic turmoil at home. While the Board is not wholly unsympathetic to that explanation, nonetheless, it is painfully clear to Claimant that while in the service of his employer his first obligation is to meet the requirements of service established by the Carrier.

Therefore, the Board will direct Claimant restored to service, without pay, subject to a six month probationary period. Attendant therewith it is an additional requirement that claimant meet with his representative and immediate supervisor and have the condition of probation explained to him. During the period of probation infractions of Carrier's rules and regulations which otherwise would not be dischargeable, in Claimant's case, subject to the provisions of his Investigation Rule, are and will be dischargeable offenses.

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

A. D. Arnett, Employee Member

E. N. Jacobs, Jr.

E. N. Jacobs, Jr., Carrier Member

A. Thomas Van Wart

A. Thomas Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, May 3, 1982.