

PUBLIC LAW BOARD NO. 1838

Award No. 69

Case No. 69

Carrier File MW-PO-81-35

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement Claim on behalf of T. L. Hager account his dismissal from
of service as a result of an investigation held on July 17, 1981.
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 began service with Carrier in April of 1979. On June 26, 1981 Claimant was dismissed from all service on the Carrier for being absent without permission. At the time Claimant was working as an extra force laborer at Portsmouth, Ohio for the division Engineer-Maintenance. Claimant was returning from a sick leave and was notified to report on Monday, June 22, 1981 at Reynoldsville, Ohio to work with Switch Force 5. Claimant arrived for his assignment on Sunday the 21st and sought out the camp car for Switch Force 5. With the assistance of the yardmaster from Joyce Avenue, Claimant located the camp car but discovered that it was locked. Arrangements were made for Claimant to spend the night at a local motel and to report for his work assignment

at 7:00 AM on the 22nd. Claimant did not show for work on the 21st nor through Thursday, the 25th, when he called the Carrier's office and spoke to the Roadmaster's Clerk. Claimant was instructed to come in on Friday and see J. D. Gearhart, Division Engineer - Maintenance. Mr. Gearhart reviewed Claimant's record, determined that Claimant's car had been impounded by the Columbus Police but that Claimant himself had not been, and based upon Claimant's record, dismissed Claimant from all service of the Carrier.

Claimant offered the explanation that he waited at the motel, expecting to be picked up. When no one came for him he contacted the office at around 8:00 o'clock but was unable to get ahold of anybody, nor was he able to locate where the gang was working. Claimant testified at his hearing that he looked all day Monday for the gang but was unable to locate them. On Tuesday morning he was stopped by the Reynoldsville Police where his car was impounded and held for a \$30.00 fine. He explained that after he paid the fine he was broke he had to walk several miles to get to someplace where he could obtain some funds to pay for his tow bill, that he had to get a release from the police department, necessitating further delays while his title was brought down to him from his home and so on.

In his short term of service Claimant had been warned on at least four different occasions about excessive absenteeism. Carrier concluded from Claimant's explanation as well as his failure to contact any Carrier officer from Monday morning until Thursday afternoon that Claimant manifested no sincere genuine or responsible attitude toward keeping his employment with the railroad. Based upon the record before us, the Board can find no abuse by Carrier of the conclusions it arrived

at. Claimant had ample warning as well as ample opportunity to correct his attitude towards his responsibilities to his employer. As recently as April 3, 1981 Claimant was sent a letter, which in pertinent part, read:

"Consider this as a letter of warning to you for being absent without permission...

So that you may know the seriousness of being absent without permission, we are quoting Rule 26 of your current M/W Agreement made between your Organization and the Norfolk and Western Railway Company:

RULE 26 - Detained from Work

'An employee desiring to be absent from service must obtain permission from his foreman or the proper officer.. In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman or the proper officer as early as possible."

We trust that you will give this letter your utmost attention so that this will not happen again. If so, we will have no alternative except to take drastic action against you."

In view of the timing of Carrier's last warning and Claimant's failure to protect service, as set forth in the record, we cannot conclude that Carrier's dismissal of Claimant was unreasonable or excessive. This claim will be denied.

AWARD: Claim denied.

Bryce L. Hall
Bryce Hall, Employee Member

J. A. Abbateello, Jr.
J. A. Abbateello, Jr., Carrier Member

A. Thomas Van Wart
A. Thomas Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, March 22, 1984.