

PUBLIC LAW BOARD NO. 1838

Award No. 9

Case No. MW-RO-76-2

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement of
Claim: 1. Carrier violated the effective Agreement as of December 3, 1975 when
 it unfairly and unjustly dismissed from its service Extra Force Laborer
 L. M. Mitchell, Jr.

 2. Claimant Mitchell shall be restored to service, paid for all time
 lost, with vacation, seniority and all other rights unimpaired.

Findings: The Board finds, after hearing upon the whole record and all evidence
 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, an extra force Laborer for some six (6) years, was dismissed
from Carrier's service December 3, 1975 for unauthorized absence from duty
December 1, through December 3, 1975 in violation of Agreement Rule 26.

Said Rule 26 provides:

"An employee desiring to be absent from service must obtain permission
from his foreman or the proper officer. An employee detained from work
on account of sickness or for other unavoidable cause shall notify his
foreman or the proper officer as early as possible."

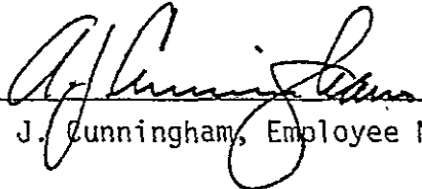
The subsequent investigation thereon, held upon Claimant's request, failed
to create cause for a change in the discipline originally imposed.


Claimant was accorded due process.

The evidence adduced, including Claimant's admission, provides ample support for Carrier's conclusion that Claimant had been off without authority and that he had failed to notify any Carrier Supervisor of his intent to be absent on December 1, 2 and 3, 1975.

In light of the fact that Claimant had been previously dismissed from service, June 17, 1971 for being absent without permission and was reinstated a month later, the Board finds that the discipline assessed was reasonable, therefore this claim will be denied.

Award: Claim denied.


A. J. Cunningham, Employee Member


G. C. Edwards, Carrier Member


Arthur T. Van Wart, Chairman and
Neutral Member

Issued at Wilmington, Delaware, May 1, 1978.