

PUBLIC LAW BOARD NO. 3845

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of
Way Employees

and

Norfolk and Western Railway
Company (Lake Region)

Case No. 6
Award No. 6

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Crossing Watchman Melvin Gaines for failing to protect his position was without just cause and excessive. [Organization File: MW-CGO-80-4(2)].

(2) Claimant Melvin Gaines shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered by him".

OPINION OF THE BOARD

Claimant Melvin Gaines was employed by Carrier as a Crossing Watchman in Hammond, Indiana on the night of May 8-9, 1983. According to Claimant's testimony at the investigation hearing held on May 17, 1983, he left his position at approximately 3:15 a.m. to change a flat tire on his automobile

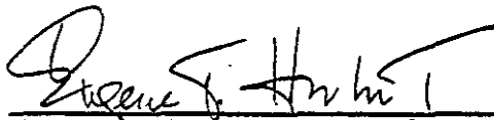
which, as a result, he had had to leave illegally parked. Claimant never returned to complete his shift which ended at 7:00 a.m. because he had in the meantime been arrested by the Indiana State Police for attempted theft of a tire and rim. During Claimant's absence, a train went through the crossing which it was his duty to protect. Other Carrier personnel were fortunately able to issue a timely warning to the train.

Claimant's reason for abandoning his post is not sufficient to excuse his absence. While he may have intended to return to his post within a brief period, the fact is that he did not do so. He acted at his own peril when he left the crossing tower imperiling thereby the lives of others in so doing.

Upon a careful review of all the evidence, this Board finds that Claimant received a fair and impartial hearing and was afforded full due process. There was substantial evidence of Claimant's guilt and the punishment of dismissal is neither unreasonable nor excessive.

AWARD

Claim denied.


E.T. Herbert, Neutral Member


S.C. Lyons, Carrier Member


H.G. Harper, Employee Member

June 25, 1985
- 2 -