

SPECIAL BOARD OF ADJUSTMENT NO. 936

Parties
to the
Dispute

:
: Brotherhood of Maintenance of Way Employees :
:
: vs. :
:
: Norfolk and Western Railway Company :
: (Lake Region) :
:

Case No. 10
Award No. 10

STATEMENT OF CLAIM

(1) The dismissal of Assistant Foreman A. Martinez for alleged insubordination in that you became loud, boisterous, belligerent and used profane language toward Division Engineer Britt and reckless operation of your personal vehicle without due regard for the safety of persons or property on February 27, 1981 was without just and sufficient cause, on the basis of unproven charges and arbitrary. [File No. MW-BVE-76-18].

(2) Assistant Foreman A. Martinez shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD

Claimant A. Martinez is an Assistant Foreman who was returning to work from a sick leave. He became embroiled in a shouting session with people in the Division Engineer's office. Claimant also struck a telephone pole with his car as he left Carrier's property. Claimant was charged with insubordination and operating his vehicle in an unsafe manner while on Company property. A hearing into the matter


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was held on March 27, 1981. Claimant was found guilty as charged and dismissed from Carrier's service.

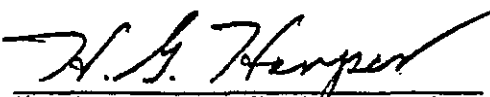
This board has reviewed the transcript of the hearing together with the other material presented in this case and must conclude that Claimant was afforded a fair hearing and is guilty as charged. The Board, however, does not view Claimant's behavior as insubordination in the classical sense. (He did not refuse an order of a Supervisor to perform certain work, as is the situation in Cases No. 8 and 9 of this Board.) As a result, we do not think that dismissal from service is the appropriate penalty. It is this Board's opinion that Claimant should be returned to service on a last-chance basis and instructed that he must control his emotions in the future or suffer permanent dismissal from Carrier's service.

AWARD

Claimant shall be reinstated to his former position with seniority intact but with no back pay for lost time or benefits. Carrier shall implement this award within 30 days of the date it is signed by this Board.


R. E. Dennis, Neutral Member


S. C. Lyons, Carrier Member


H. G. Harper, Employee Member

MAY 10 1984