

PUBLIC LAW BOARD NO. 1760

Award No. 123

Case No. 123

Carrier File MW-DEC-90-21

Parties to Dispute: Brotherhood of Maintenance of Way Employees and Norfolk and Western Railway Company (Former Wabash)

Statement

of Claim: Claim is made for and on behalf of Machine Operator G. L. Otto for removal of a thirty 30 deferred suspension from his record account violating Safety Rule GR-6 and GR-24 when he failed to protect his assignment.

Findings: The Board has jurisdiction of the of this case by reason of the parties Agreement establishing this Board therefor.

The Claimant, Machine Operator, J. L. Otto, was serving as a Foreman on a Decatur Crossing Gang 2 on December 19, 1989. He failed to appear for work on that date. One of his co-workers advised the Track Supervisor, L. Benton, that the Claimant had not been seen at the usual meeting place in order to drive to work.

The Supervisor called the Claimant's home and was informed that the Claimant was off but was not due to the injury received the previous day. He was off for personal reasons.

A notice of formal investigation was sent on the charge:

"...being in violation of Safety Rule GR-6...and Rule 24 of the working agreement, ... and your failure to protect your assignment on December 19, 1989."

Carrier as a result of the hearing held concluded him to be culpable and assessed a thirty day deferred suspension as discipline therefor. GR-6 reads:

"Employees must report for duty at the designated time and place. They must be alert and attentive and devote themselves exclusively to the company service while on duty. They must not absent themselves from duty, exchange duties, or substitute others in their place without proper authority."

Schedule Agreement Provision, Rule 24 - Detained from Work, reads:

"Employees desiring to be absent from service must obtain permission from Foreman or the proper officer. Employee detained from work account of sickness or other unavoidable causes shall notify his Foreman or other proper officer as possible."

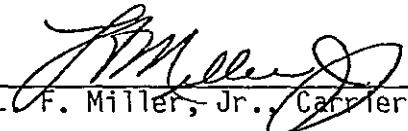
There were no procedural violations, alleged or otherwise. Hence, Claimant was accorded the due process to which entitled under his discipline rule.

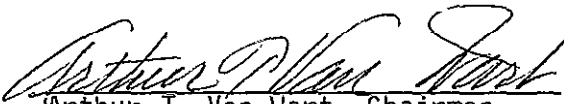
There was sufficient evidence adduced to support Carrier's conclusion as to the Claimant's culpability even though such was just a technical violation. The discipline assessed in the circumstances of this particular case was excessive. It will be reduced to a formal reprimand. The Claimant has an outstanding service record. He has reasonably long years of service. The Claimant has worked competently and successfully in several supervisory positions. The circumstances indicate that a reasonable effort was made to comply with the rule but such effort was not technically proper.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty days of date of issuance shown below.

  
S. Hammons, Jr. Employee Member

  
L. F. Miller, Jr., Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued December 31, 1991.