

PUBLIC LAW BOARD NO. 1760

Award No. 127

Case No. 127

Docket No. MW-DECR-89-54

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

Statement
of Claim: Claim of D. J. Worley for removal of five days actual
 suspension assessed as a result of investigation held
 October 11, 1989 for failure to protect assignment.

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

The Claimant, Track Laborer D. J. Worley, was regularly
assigned as such on Monday, September 11, 1989 at Luther
Yard, St. Louis, MO. His assigned rest days were Saturday
and Sunday. On said Monday, Claimant telephoned Track
Supervisor Jackson and said that he had pneumonia and
requested to mark off on vacation September 11 to the 15.
The Claimant assured Jackson that he would be at work the
following Monday, September 18, 1989.

However, the Claimant failed to protect his assignment
on September 18. He also failed to return to work on the
19th. Track Supervisor Jackson telephoned the Claimant's
home on September 19, about 7:15 AM and inquired about his
whereabouts. The Claimant's daughter advised Mr. Jackson
that she did not know where her father was. He returned to
work on September 20, 1989.

As a result of this incident the Claimant was cited to
an investigation on the charge of being in violation of
Safety Rule GR-6 and General Rule 24 of the Schedule
Agreement by failing to protect his assignment on September
18 and 19. As a result of the said investigation, the
Claimant was found culpable. He was assessed the discipline
here appealed.

Rule 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 places with proper authority."

Agreement Rule 24 - Detained from Work, reads:

"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 Claimant was accorded the due process to which entitled.

There was sufficient evidence adduced to support Carrier's conclusion of the Claimant's culpability of the charge placed against him. That Claimant's testimony and that of Carrier's witness, Roadmaster Jackson, differed and that the Carrier chose to believe Roadmaster Johnson as being more credible than the Claimant was not shown to be arbitrary or capricious in the exercise of such discretion. Clearly, on September 11, the Claimant did advise the Roadmaster that he had pneumonia and that he was going to take his scheduled vacation of one week. Said vacation ended on September 15. The record is clear that he failed to return on September 18 and 19 and if true belatedly attempted to contact the Roadmaster's office on September 19. Consequently, the Claimant failed to protect his assignment on September 18 and 19 or, in the alternative, to follow Rule GR-6 and 24.

The discipline in light of the offense and Claimant's service record is not deemed unreasonable. This claim will be denied.

Award: Claim denied.



S. Hammons, Jr. Employee Member



E. F. Miller, Jr. Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member