

PUBLIC LAW BOARD NO. 1760

Award No. 14

Docket No. MW-DEC-77-5

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: Carrier violated the Agreement by dismissing Track Foreman Tyson from Carrier's service on unproven charges and failing to hold a fair and impartial hearing. Carrier shall now reverse the decision of Mr. English and pay Mr. Dyson the additional 7 hours straight time and the three hours overtime and any additional time that he would have lost because of the decision of Mr. English and strike this hearing from his record with all rights unimpaired.

Findings: The Board, after hearing upon the whole record and all evidence, finds 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 February 2, 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 Track Foreman was notified by the Division Engineer to appear for formal investigation.

"... for submitting eight hours on the 17th of January, 1977, and for eight hours on the 18th of January, 1977, for work not actually performed, on Form AD 452, Extra Force 21, Lafayette."

Claimant failed to appear for the investigation. As a result of the investigation held, Carrier concluded that Claimant was guilty as charged. He was dismissed from the service as discipline therefore. The fact that Claimant was not personally at the investigation that was finally held on

March 21, 1977 was neither error nor attributal to any action taken by Carrier. The record reflects that special effort had been made by Carrier to notify Claimant as to the investigation, despite it being continually postponed and despite an effort to hand deliver notification of the investigation which Claimant refused to accept.

It is noted that Claimant was also told verbally to which he did respond by stating that he would appear at the investigation with his attorney. In any event, the various methods of notification undertaken are deemed to have been sufficient. Claimant was properly advised as to the investigation and its purpose. That he did not attend is not the responsibility of Carrier. Carrier undertook reasonable and diligent efforts to assure notification. Nor can it be held to have been error for Carrier to refuse the General Chairman's request to recess the investigation until Claimant was notified. The fact is that the record indicated that Claimant was notified. It was therefore proper for Carrier to have proceeded in absentia despite the General Chairman choosing to leave the investigation.

There was sufficient competent and probative evidence adduced to support Carrier's conclusion as to Claimant's culpability. Claimant, had in fact, signed his name to the Form AD-452 on which claim is made for 8 hours each for the 17th and 18th of January 1977. In addition to signing such Form, the evidence also shows that Claimant did not work on January 17th and that he worked only a portion of the 18th.

The Board finds that Claimant received a fair hearing, that there was sufficient evidence to support Carrier's conclusion and that the discipline was not unreasonable. Here the Claimant had previously been dismissed from the service once and consideration of his previous record in line with the

offense committed was not improper. We cannot find that Carrier decision was either arbitrary, vindictive or that it had acted in bad faith. The Board will not substitute its judgment for that of the Carrier. This claim will be denied.

Award: Claim denied.

M. A. Christie
M. A. Christie, Employee Member

G. C. Edwards
G. C. Edwards, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member