

PUBLIC LAW BOARD NO. 1760

Award No. 15

Docket No. MW-DEC-77-36

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement

of Claim: Carrier violated the effective Agreement by dismissing Douglas Newman, R. W. Wheeler, R. G. Winner and T. A. Smith from service on September 21, 1977, without just and reasonable cause. R. W. Wheeler, Doug Newman & R. G. Winner be reinstated and paid for all time held out of service which the Carrier did not sustain their charges and that T. A. Smith be paid at his respective rate for the 60 days discipline, all in accordance with Rule 20 of the effective agreement.

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 Newman had been employed over 3½ years while the other Claimants had been employed from some 2 to 4 months. On September 21, 1977, Claimants were relieved from service. A formal investigation was conducted, October 6, 1977, on the charges of illegal entry into a building and the theft of personal property on September 21, 1977. As a result of the investigation held, Claimants were notified, on October 25, 1977, that except for Claimant Smith, their dismissal was being upheld. As to Claimant

Smith, he was advised that as a result of this investigation his discipline had been mitigated to sixty (60) calendar days.

We find that Claimants were accorded due process.

There was sufficient competent evidence adduced to support the conclusions reached by Carrier. This is particularly so as is related to the theft of personal property. The record reflects that a break-in had occurred, on September 16, 1977, at the former Nickel Plate Depot at Edwardsville, Illinois. There are two depots at Edwardsville, Illinois. One depot on the former Nickel Plate side and the other on the former Wabash side. It was reported that there had been a break-in on the night of September 14th at the Nickel Plate Depot but that nothing was missing. Despite the security measures taken at that time, during the night of September 15th a window had been forced open and a caboose cushion taken. On September 12 Claimant Winner had been found inside the locked Depot about 7:00 a.m. when the crew arrived for work. He was told by the Section crew that he was on the wrong division and he should be over on the former Wabash side instead of the former Nickel Plate. The building was checked on September 17, 18, and 19 with no exceptions. However, 12:40 a.m. on September 20 the patrolman making a check found the window open. A subsequent check with the Section Foreman by a Carrier Police Lieutenant of the Property Protection Department disclosed the following personal items missing:

two pairs of insulated boots, one pair of insulated coveralls, one complete bedding for a roll away bed, and one electric deep fryer, Sunbeam brand.
The Company property taken was one colored hard hat.

On September 21st, at 8:40 a.m., said Section Foreman and said Police Lieutenant inspected the N&W bunk car, 5271718, located on the bung

track at Decatur Division, Edwardsville, Illinois. They found therein several of the items which had previously been removed from the depot. Inside the bunk car were found one pair of insulated boots, one pair of insulated coveralls, one electric deep fryer, one electric toaster, the bedding for a roll away bed. Claimants are four men who were living in said bunk car.

Claimant Newman was wearing the section colored hard hat. He admitted that he got it out of the building and told the Section Foreman that he got it out of the building.

Claimant Wheeler was wearing the shirt that was the property of another man. He too admitted that he had gotten it from inside the building. There was a jacket belonging to another employee laying on the floor.

The four men said that they went over to the depot to take a shower. They said that the north door, where the houses are at, was open. Claimants denied climbing in through the window. They said they did not know how the pair of insulated boots, the insulated coveralls, the deep fryer, or the electric toaster got in the bunk car.

Claimant Newman said that he took the roll away bedding because he did not have any bedding for his bed.

Claimant Winner admitted that he had boots in the trunk of his automobile. Claimant Winner opened up the trunk of his car and he gave the boots therein back to the Section Foreman. The fifth man Claimant Smith was living in town.

We conclude that the evidence was sufficient to support the conclusions reached by Carrier and that the discipline assessed against Claimants was not unreasonable. In the particular circumstances 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