

PUBLIC LAW BOARD NO. 1760

Award No. 50

Case No. 50

Docket No. MW-STL-81-15

Parties Brotherhood of Maintenance of Way Employees
to and

Dispute Norfolk and Western Railway Company (Former Wabash)

Statement

of Claim: 1. Carrier violated the effective agreement with
Foreman C. Grandberry who was unjustly dismissed.

2. Claimant Grandberry shall now be reinstated with
all rights unimpaired and pay for all time
held out of service due to the Carrier not
sustaining their charges.

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, prior to his dismissal, was working as relief foreman at the Carrier's St. Louis terminal. He had been employed by Carrier and the former Illinois Terminal for some 8 years.

Claimant was notified, under date of May 6, 1983, to attend a formal investigation on the charge:

"...to determine your responsibility for your excessive absenteeism in that you did not work a full eight (8) hour shift on January 6, February 14, March 11, March 25, April 11, May 3, 1983 and you did not work at all on January 14, January 26, March 18, April 21, April 22, and May 5, 1983."

As a result of the investigation held on June 7, 1983 Carrier concluded Claimant to be guilty as charged. He was dismissed from service, under date of June 22, 1983, as discipline therefor.

The Board finds that Claimant was accorded the due process to which entitled under Rule 20 - Discipline and Grievances. The notice was precise. It contained sufficient information to place Claimant on guard as to what he had to prepare his defense for. The notice was specific and precise. Claimant was charged with "excessive absenteeism." The notice identified the specific dates and the extent of the violation on such dates.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's guilt of the charges placed against him. The record reflects that on 12 occasions between January 1st and May 5th of 1983 Claimant had been late or absent 12 times. His record, according to the transcript, reflected that he had a 14% absenteeism record.

There were standing instructions that employees, including Claimant, were to mark off only at the Division Engineer's office. If, as asserted by Claimant at the investigation, that he marked off with Foreman Sangster, who was on sick leave at the time of the investigation, then his method of marking off was contrary to instructions. Such fact might explain why such absences were not logged.

That Claimant was absent or tardy 12 times in a four month period would be considered excessive particularly, as here, when such reflected a continuing pattern.

Claimant had previously been warned, counselled and disciplined concerning his absenteeism and tardiness but to no avail. In the 8 year span he had been disciplined on five prior occasions, four of which involved absenteeism and failure to timely report such absences. Claimant has demonstrated by his record that he is indifferent to the requirements of Carrier's service. He does not desire to work for the Carrier. We find that Carrier need not be burdened with an employee who does not desire to work for it. In the circumstances, we find that the discipline assessed is reasonable. This claim will be denied.

Award: Claim denied.

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

S.C. Lyons
S. C. Lyons, Carrier Member

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

Issued December 14, 1984.