

PUBLIC LAW BOARD NO. 1760

Award No. 52

Case No. 52

Docket No. MW-MOB-81-28

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 when section laborer J. M. Whitaker, Jr. was unjustly dismissed on July 1, 1983.

2. Claimant Whitaker shall now be restored to his former position with all rights unimpaired and pay for all time lost at the respective rate of his position until he is returned to work.

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, a Section Laborer, in Carrier's North Kansas City Yard, was notified, on May 18, 1983, to attend a formal investigation on May 27, 1983 on the charge:

"To determine your responsibility in connection with your excessive absenteeism on either a portion or all of the following dates:

October 4, 5, 19, 1982

November 23, 1982

December 2, 15, 17, 21, 29, 1982

January 5, 12, 18, 24, 26, 27, 28, 31, 1983

February 2, 3, 4, 23, 24, 25, 28, 1983

March 2, 4, 7, 9, 17, 23, 24, 25, 1983

April 11, 15, 19, 21, 25, 26, 1983

May 2, 4, 5, 1983...."

The hearing was postponed and finally held on June 28, 1983. Following the hearing Carrier concluded Claimant to be guilty as charged. He was dismissed from service as discipline therefor.

The Board finds that Claimant was accorded the due process to which entitled under Rule 20 - Discipline and Grievances.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's guilt. Whether Claimant may or may not have been warned is beyond the point. Claimant was disciplined for excessive absenteeism and he was absent 21% of the time. He was, in effect, a part-time employee. Irrespective of the reason for the absenteeism, the fact is that Claimant's absenteeism made him an undependable employee. That was the reason that the matter was brought to a head.

There is nothing in the labor agreement which requires Carrier to conduct its operation with employees who repeatedly fail to protect the requirements of its service. Claimant has demonstrated that he is not willing to fulfill his obligation to protect the requirements of Carrier's service. The record so reflects. The Board finds no basis to permit it to substitute its judgement for that of Carrier. In the circumstances, the discipline is found reasonable. This claim will be denied.

Award: Claim denied.


M. A. Christie, Employee Member


S. C. Lyons, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued December 14, 1984.