

PUBLIC LAW BOARD NO. 1760

Award No. 56

Case No. 56

Docket No. MW-DEC-83-32

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 Laborer D. Y. Carney was unjustly assessed thirty (30) days actual suspension, and was not allowed a fair and impartial hearing.

2. Claimant Carney shall be paid at the respective rate of her position from the date the actual suspension was started, July 19 through 26, 1983.

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 was working as a laborer on T-7 Tie Gang on the Lafayette District and had been employed as such for almost five years. She was notified under date of June 10, 1983 by the Division Engineer to attend a formal investigation on the charge:

"To determine your responsibility in connection with your being in violation of N&W Safety Rules 1033 and that part of Rule 713 which reads 'making false statement, or concealing facts concerning matters under investigation are sufficient cause for dismissal.'

On night of June 1 and morning of June 2, 1983 at State Line Side, MP 294.2, Lafayette District, in that you allowed unauthorized persons to enter bunk car #NW 527163 and made false statements concerning the presence of two

unauthorized men on the bunk car the night of June 1, and morning of June 2, 1983."

As a result thereof, Claimant was considered guilty as charged. She was given thirty (30) days actual suspension as discipline therefor.

Safety Rule 1033 reads:

"When practicable, employees should warn unauthorized persons, particularly children, not to trespass on railroad property. Police and special service department representatives shall be notified promptly."

According to the Division Engineer Cashner's statement one must conclude that insufficient information was adduced to support Carrier's conclusion as to the charges placed against Claimant. He testified that Claimant had told Mrs. Perkins that it was wrong to bring these men into the bunk cars. She advised that Mrs. Perkins would not listen to her. She stated that it was:

"At Mrs. Perkins' idea to bring the boys into the bunk car."

Mr. Cashner further testified in part:

"I had conflicting statements concerning what happened and my conflicting statements meant that somebody was lying, not telling the truth, falsifying information and my investigation indicated that Mrs. Carney made an attempt to handle the situation that is under investigation correctly."

Thus, it would appear that Claimant had given truthful answers. She had not given false statements. Nor had she attempted to conceal any facts which she had attempted to permit the trespassers to enter the car. In the circumstances, we think that the discipline assessed was arbitrary and capricious. A reprimand might have been in order but certainly 30 days actual suspension was not warranted or justified. The Board finds that the claim will be sustained.

Award: Claim sustained.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

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

S. C. Lyons <sup>Carrier</sup> <sup>Dissents</sup>  
S. C. Lyons, Carrier Member

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

Issued December 14, 1984.