

PUBLIC LAW BOARD NO. 1790

PARTIES Brotherhood of Railway, Airline and
TO Steamship Clerks, Freight Handlers,
DISPUTE: Express and Station Employees

and

Norfolk and Western Railway Company

STATEMENT
OF CLAIM:

1. Carrier acted in an arbitrary, capricious, discriminatory and uncalled for manner when on March 12, 1976, it dismissed Janitor L. G. Bradford from service of the Carrier.
2. As a result of such action Carrier shall now be required to:
 - (a) Restore Janitor L. G. Bradford to service of the Carrier with all seniority, vacation and other rights unimpaired.
 - (b) Pay Janitor L. G. Bradford for all time lost commencing with March 13, 1976, and continuing until Janitor Bradford is restored to service, less outside earnings.
 - (c) Pay Janitor L. G. Bradford any amount he incurred for medical or surgical expenses for himself or dependents to the extent that such payments would have been paid by Travelers Insurance Company under Group Policy No. GA-23000 and, in the event of the death of Janitor L. G. Bradford, pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have made in the purchase of substitute health, welfare and life insurance.
 - (d) Pay Janitor L. G. Bradford interest at the rate of ten (10) per cent, compounded annually on the anniversary of this claim for amounts due in (b) above.

FINDINGS: By reason of the Agreement dated July 22, 1976, and upon the whole record and all the evidence, the Board finds that the parties herein are employe and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

On April 4, 1977, the Chairman and neutral member of this board wrote the Claimant advising him that the board would meet at 9:00 A.M. on Tuesday, April 19, 1977 at the Carrier's office in Roanoke, Virginia to hear and consider his claim. Pursuant thereto, the Claimant appeared and participated in the proceedings.

After an investigation, the Claimant was dismissed from service because he left his position unprotected for several hours on each of three days.

Employes' only position is that the penalty is too severe and that there are mitigating circumstances that deserve consideration. That he was absent without leave as charged is admitted.

In Award No. 5 we reduced a 45 day actual suspension to 15 actual days. The employe in that case marked off sick when he wanted to and did attend an antique automobile show. We held that the penalty was too severe because the employe had an unblemished work record for more than five years prior to this incident. In Award No. 17 we reduced the penalty of dismissal to 90 days suspension because the employe otherwise had an impeccable work record.

Here the Claimant was an employe of the Carrier for seven years. There is no evidence that he had been previously warned, suspended, otherwise disciplined or discharged. The incidents of absence from his position were occasioned by difficulties at home and with his neighbors. His protective family instincts overcame his rational obligations as an employe.

Employer-employe relations cannot be administered in a vacuum. Humane considerations are relevant when an infraction occurs. One should not mete out the most extreme economic penalty merely because the act alone is a violation of a rule or an admitted misconduct. One should consider the infraction involved, the employe's length of service, his work record and the reasons for the infraction.

That the Claimant deserved to be penalized is without question. Based upon the record in this case, he deserved to be suspended. More than twelve months have elapsed since he was dismissed from service. Normally, a suspension of twelve months would be too severe based upon the Claimant's length of service, his good work record, and reasons for his absences and the circumstances that led to them. But it would serve no useful purpose to now expect the Carrier to compensate the Claimant for any time between March 11 and the date of his reinstatement.


For the reasons herein stated, the Board finds that the Carrier violated the Agreement, that the penalty of dismissal is too severe, that the Claimant deserved to be disciplined, that the Claimant has been held out of service for approximately fourteen months, that the Carrier is directed to reinstate the Claimant as an employee of the Carrier with full seniority and other contractual rights preserved and unimpaired, that the Claimant shall receive no compensation whatsoever from the time he was held out of service until he is reinstated, and that Employees' claim for ten percent (10%) interest compounded annually is denied.

AWARD

Claim sustained in accordance with the findings.

Carrier is directed to comply with this award within thirty (30) days from the date hereof.

PUBLIC LAW BOARD NO. 1790


DAVID DOLNICK, Chairman and Neutral Member


S. G. BISHOP, Employee Member


J. D. GEREAX, Carrier Member

DATED: 