

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK & WESTERN RAILWAY COMPANY

Case No. 125

STATEMENT OF CLAIM:

Claim on behalf of P. L. Walker for reinstatement to service with all rights, including seniority and vacation, unimpaired, with payment for all time lost beginning April 8, 1998, and continuing up to the date he has been reinstated, as a result of his dismissal following a formal investigation held on April 29, 1998, in connection with Claimant being absent without proper authority from March 13 to April 7, 1998. (File MW-FTW-98-15-LM-113.)

FINDINGS:

Claimant P. L. Walker was employed by the Carrier as a track laborer at the time of the claim.

On April 9, 1998, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with the charge that he was absent from duty without proper authority from March 13, 1998, through April 7, 1998, and that, on each date, he failed to protect his assignment and did not contact the Carrier.

After one postponement, the hearing took place on April 29 1998. The Claimant was not present. On May 6, 1998, the Carrier notified the Claimant that he had been found guilty of the charges and was being assessed discipline of dismissal from all service with the Carrier.

The Organization filed a claim on behalf of the Claimant challenging the discipline. The Organization contends that the Carrier ignored the fact tht the Claimant was a 29-year employee of the Carrier and was suffering from mental stress, that it prejudged the Claimant, and that the

Carrier violated Rules 22-A and 22-E of the parties' working agreement. The Organization further contends that the Carrier failed to conduct a fair and impartial hearing, failed to adequately meet its burden of proof, failed to take into account all of the surrounding circumstances of the incident, and that the discipline assessed was unjust, excessive, and an abuse of the Carrier's discretion.

The Carrier denied the claim based on the evidence in the record, contending that the Claimant was warned on several occasions about his unexplained absences, that he did not present himself at the investigation to offer any explanation or reason for his actions, and that no evidence was presented to confirm the Claimant's mental disability.

The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

This Board has reviewed the evidence and testimony in this case, and we find that the Carrier presented sufficient evidence to support the finding that the Claimant was guilty of being absent from duty without proper authority from March 13, 1998, through April 17, 1998. The Claimant failed to protect his assignment and did not contact the Carrier during that period. Consequently, the Claimant clearly subjected himself to disciplinary action.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The record reveals that this Claimant was suffering from severe psychological and mental

stress during the period in question. It is clear from the documents contained in the record that he was suffering from a type of mental illness. Consequently, this Board must find that the Carrier acted without just cause when it terminated the Claimant's employment. This Board therefore orders that the Claimant be reinstated, but without back pay. It is not clear that the Claimant was capable of working during the time in question since he was suffering from the psychological problems.

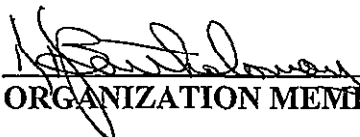
This Board orders that the Claimant be reinstated, but he will not be able to return to work until he passes a back-to-work physical which would include a determination of his mental fitness for duty.

AWARD:

The claim is sustained in part. The Claimant shall be reinstated to employment, but without back pay. The Claimant shall not be put back to work until he passes a return-to-work physical which includes a determination of his mental fitness for duty.

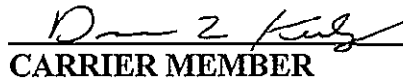


PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 3-10-00



CARRIER MEMBER

DATED: 3-2-00