

PUBLIC LAW BOARD 1837

Case #13

AWARD 13

(MW-BRS-75-30)

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

vs

Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement dated April 1, 1951, on September 22, 1975, by unfairly and unjustly dismissing the Claimant, Bobby R. Larson, on unwarranted charges.

2. Claimant Larson should be restored to duty with all rights unimpaired and made whole for all wage loss suffered.

FINDINGS: This Board upon the whole record and all the evidence finds that:

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

OPINION:

The Claimant was employed as a Track Laborer with about a year and a half of service at the time of the events germane to this dispute. On September 19, 1975, the Claimant -- with another laborer -- was assigned to assist a welder in performing certain refurbishment activities. Apparently, the welder found the need to remove the cap from an oxygen cylinder, doing so by striking it with a wrench. The laborers objected to this technique

out of concern for safety; the welder told them to leave if they did not like it. Both did so, sought out their foreman and advised of their concern. The foreman indicated a willingness to investigate the matter, but that the Claimant and the other laborer would have to accompany him back to the site of the event. Both refused and the foreman apparently advised them to either return to their assigned work place or go home; the laborers left, purportedly in search of a safety man and/or in order to contact the Roadmaster. When they returned to work on their next assigned work day, they were advised of their termination for leaving the job.

According to the Carrier, the Claimant refused to perform the duties assigned and willfully absented himself from the job; the Carrier also points to an unacceptable record of absenteeism as further basis for his removal. According to the Organization, the Claimant had a right to remove himself from a dangerous work environment and thereafter merely exercised the options offered him by the foreman -- return to his worksite or go home. The Organization objects to use of the Claimant's record of absenteeism as a further basis to affirm his removal and asserts that, in any case, removal was excessive and harsh considering the minor nature of the infraction involved, if any at all was involved.

It seems clear that the Claimant had at least a perceived safety concern over the actions of the welder relative to removal

of the oxygen cylinder cap. He was within his rights to raise the matter to the Welder. (According to the record, the Claimant asserted that the welder told him to "go home" if he did not like the way he was working, and since he had been assigned to work with the welder, the Claimant merely carried out his order -- to "go home;"-- this is a vacuous notion and need not be addressed here.) We are persuaded the Claimant was still within his rights to remove himself from "harm's way" as he perceived it and to report to his superior. We are equally satisfied that the foreman's purported alternative of "going home" if the Claimant refused to return to his assigned duties was no option at all: the Claimant would have been entitled to hold his ground away from the area where the alleged safety infraction was occurring, but remaining on the job. It is well established that an employee cannot be required to work in an unsafe area or where unsafe work practices are being implemented. While it may be arguable whether such was the case here, we find no fault with the Claimant's actions, until he decided to leave the job; there he erred. We find no support for the Carrier to assert consideration of the Claimant's record of attendance as a basis for his removal, considering the nature of the case.


We shall direct that the Claimant be afforded an opportunity to return to work with his seniority intact, but without back pay.

AWARD:

The Agreement was violated to the extent set forth
in the Opinion. The Claim is upheld to the extent set forth
in the Opinion.


James F. Searce
Neutral Member


G. C. Edwards
Carrier Member


Fred Wurpel, Jr.
Organization Member

Dated this 28th day of April, 1980 at Atlanta Ga