

## PUBLIC LAW BOARD 1837

(MW-CLV-77-3)

Case No. 3

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement dated February 1, 1951, on May 13, 1977, without due cause, when it dismissed Claimants G. Dessausure, D. Dempsey and B. Strozier.

2. The dismissal of the claimants was excessive, capricious, unwarranted and unjustified. The claimants now be restored to service with seniority unimpaired, and payment allowed for the assigned working hours actually lost, less any earnings in the service of the Company.

FINDINGS:

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

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

This Board has jurisdiction over the dispute involved herein.

OPINION:

The Claimants in this case are an Assistant Section Foreman (Dessausure), a Trackman (Strozier) and a Laborer-Driver (Dempsey). The incident which resulted in their removal occurred on February 28, 1977 when, according to their section foreman, he instructed the Assistant Section Foreman to read the "Safety Rule" of the day, who refused. The

section foreman [redacted] en purportedly sought to [redacted] have one of the other two employees read the rule, but was also refused. The time of this incident was about 7:30 a.m. According to the Carrier, this crew had three derailments to attend to that day, but the members refused to go onto the job until the section foreman read the rule to them; the section foreman was illiterate, or nearly so. He apparently left the site where the crew was assembled several times to attend to matters; upon his return, he purportedly entreated the crew to go to work, but was refused until he read the rule. It was not until another member of management appeared at the site (trying to ascertain the whereabouts of the crew) and read the rule that the crew went to work; this was purportedly about 10:30 a.m.

According to testimony of the Claimants, they were never asked to read the rule or (in the case of the assistant foreman) was busy doing other things. They laid the responsibility onto the section foreman for their late start to work. According to the Organization, the Claimants are long service employees with good work records; it also asserts that the Carrier has failed to substantiate its case against the Claimants of insubordination and points to the weight of evidence favoring the Claimant's contentions.

The Organization's contrary claims notwithstanding, we find no basis to conclude that the hearing (which was bifurcated)

was other than proper and objective. We also find that a careful review of the record, including the transcript of the hearing, lends more credence to the Carrier's recounting of events than that of the Claimants, which was essentially self-serving. We feel this case is clear evidence of how a small, and exceedingly petty, action on the part of one or more employees can result in unwanted and unexpected results. The Claimants were clearly capricious in their refusal to comply with a reading of the rule. It is decidedly unbecoming of such seasoned veterans who, if they felt they had a complaint against their superior, had an obvious avenue to pursue such complaint -- the grievance procedure. While we might wonder whether a section foreman is "fully equipped" to fulfill his responsibilities if he cannot read, this is clearly no excuse for the untoward actions of the Claimants in this matter. We are mindful that work was delayed, for several hours, on derailments by such events, as well.

Nonetheless, we take note of the Organization's point that these are long-service employees with good work records. Assuming a lesson has been learned for the future, we shall order the return of the Claimants, with full seniority, but with no back pay.

AWARD:

Claimants shall be returned to work as of \_\_\_\_\_,  
as set out in the Opinion.

James F. Scearce

James F. Scearce  
Neutral Member

G. C. Edwards

G. C. Edwards  
Carrier Member

W. E. LaRue

W. E. LaRue  
Organization Member

Dated at Atlanta, Ga this 12 day of Aug, 1980