

PUBLIC LAW BOARD 1837

(MW-BRS-77-14)

Case No. 4

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 April 1, 1951, on July 11, 1977, when it dismissed claimant Howard L. Cammon from service.
2. The dismissal of the claimant was excessive, capricious, unwarranted and unjustified. The claimant now be restored to service with seniority and benefits unimpaired, and payment allowed for the assigned working hours actually lost while out of service of the railroad, at not less than the rate of pay for position formerly held, or for the difference in rate of pay earned if in or out of the service.

FINDINGS:

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

The carrier and 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 classified as a Laborer and assigned to the S-11 Surfacing Gang as a Ballast Regulator Operator at the time of events germane to this case. He had about five years

service with the Carrier. The record shows that camp cars were available for the S-11 crew and that the Claimant used such facilities. His assigned work hours were 7:30 a.m. to 4:00 p.m. As a Ballast Regulator Operator, the Claimant operates a machine (the "Regulator") which apparently ranged along the line of road, not always immediately in conjunction with the rest of the 8-person crew; therefore, he "kept his own time" and turned in his hours. The record also indicates that his superior at the time of events in this case was a newly appointed "Roadmaster", who kept his own record of when his assigned employees arrived to work and when they departed. According to the Roadmaster's records, the Claimant either reported late or left early, or both, or did not report at all on April 14, 15, 19, 21 and 26, 1977; as of April 26, 1977, the Roadmaster disqualified the Claimant as Ballast Regulator Operator -- a decision the Claimant disputed. The record shows that the Claimant turned in his time for the aforementioned dates as if he had worked full days; it was this alleged falsification of time sheets and unauthorized absences that resulted in a charge, investigation and his subsequent termination, on or about July 11, 1977.

According to the Carrier, the Roadmaster's records accurately reflect the Claimant's movements on the dates in

question. In his absence, per the Carrier, a supervisor would have to take the Regulator out on the line of road and operate it until the Claimant arrived. Also per the Carrier, when the Claimant would leave his work station prior to the close of his shift -- doing so without permission -- a supervisor or another employee would have to be responsible for taking it out of service. According to the Organization, while the Claimant may have been tardy a day or so during this period, he was never hours late as asserted by the Roadmaster, did not leave his duty station early and always obtained permission if he had to leave temporarily. The Organization points out that had the Claimant been as late as complained of here, the Carrier would have been obliged to "upgrade" or reassign a qualified employee to operate the Regulator -- a circumstance that did not occur.

On review of the record of this case, we are persuaded that the evidence sufficiently supports the Carrier's contention that the Claimant was not at duty as was required, was apparently unconcerned about leaving his assignment before a full day's service was tendered and also felt no hesitation to claim full compensation for the day as a result. We are inclined to conclude, however, that the Claimant was not doing so with intent to deceive in the process; considering the fact that he was unconcerned about how he approached his work site, late, in clear view

of the Roadmaster, he apparently was under the disillusion that this was acceptable conduct. And, assuming the Roadmaster's testimony to be factual, this continued for a number of days without any apparent rebuke from the Roadmaster; indeed, the first note of disagreement was apparently the Claimant's disqualification on April 26, 1977.

Whether or not the Claimant was testing the Roadmaster's mettle, continuing bad work practices that had been tolerated before, etc. is not evident from the record, but whatever the basis for such ill-conceived habits might have been, they do not justify his actions and claim of unearned compensation; we reiterate that a lack of showing was made of intent in that regard. We also note a lack of action on the part of the Roadmaster to officially register the unsatisfactory nature of the Claimant's actions. While we take no exception to the Carrier's rationale for discipline of the Claimant, we find reason to mitigate the removal to a disciplinary suspension. We trust that the Claimant will have corrected his problems that led to his non-availability for work on a regular basis and now knows a full day's pay depends upon a full day's work.

AWARD:

Claimant will be returned to work with his seniority

rights intact, but with no back pay for the reasons set forth in the Opinion.

James F. Searce
James F. Searce, Neutral Member

G. C. Edwards W. E. LaRue
G. C. Edwards, Carrier Member W. E. LaRue, Organization Member

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