

PUBLIC LAW BOARD 1837

(MW-CGO-77-7)  
Case No. 5

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, by unfairly and unjustly dismissing the claimant Spencer Young.
2. The discipline imposed was excessive, therefore, claimant Young 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 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 in this case was an Extra Gang Laborer with about five years service when, on Tuesday, June 14, 1977, he was absent from duty without either obtaining permission or reporting his whereabouts. He reported to work the following day, but, according to the Carrier, offered no valid excuse for his

absence of the previous day. By date of June 17, 1977, the Claimant was advised that a hearing was scheduled "to determine [his] being absent from duty on Tuesday, June 14, 1977, without obtaining permission or notifying [his] supervisor."

At the hearing the Claimant's prior discipline relative to attendance was made a part of the record, without apparent objection from the Organization. The Claimant was dismissed from service, citing the June 14, 1977 incident as the basis therefor.

According to the Organization, the Carrier erred by making the Claimant's prior record a part of the hearing and that the June 14, 1977 incident was insufficient basis for his removal.

Obviously, a single absence without permission would hardly stand as a basis for removal, but the record of the hearing indicates the Claimant was an employee who had had continuous problems with maintaining a satisfactory attendance. His supervisor testified, without refutation, to having counseled with him continuously over his absenteeism and to having sent formal letters of warning against a continuation of such practice. The Claimant's attendance, according to the record, continued to deteriorate: in January, 1977, the Claimant purportedly missed 66 2/3% of the days assigned, without contacting his supervisor as to why. Eventually the Claimant was assessed a ten-day suspension, returning to service on June 6, 1977, -- eight calendar days prior to the unauthorized absence of June 14.

The Claimant attributed his absence of June 14 to "oversleeping."

The essence of the Organization's defense in this case is that the Carrier is not permitted to consider the Claimant's prior disciplinary record in assessing discipline. It is a long established principle that disciplinary records relevant to the offense for which action is being taken are, or may be, relevant to determining the severity of discipline to be imposed. Here, the Claimant's attendance, or lack thereof, was clearly intolerable and efforts by the Carrier to "get his attention" by progressive discipline were obviously not effective. He had just returned from a ten-day suspension and committed the same offense. By the Claimant's own testimony (at question 44 of the transcript) when he returned to work on June 15, 1977 he seemingly felt no compulsion to discuss or explain his absence of the day before:

Q. Mr. Young, would you briefly in your own words, relate the reason for being absent?

A. The reason is because I overslept. I have been told a number of times that if you are going to be absent you have to call in at 7:00 a.m. I woke up at 10:00 a.m. and I knew it would be no good to call in that late.

We are left with a picture of an employee who apparently was unmoved by his suspension and the previous disciplinary steps taken to impress upon him the Carrier's concern over his unacceptable absentee record. While the Carrier might have been

more precise in setting the "totality" aspect of the Claimant's prior record as the basis for his removal, there is little left to doubt that he was well aware of the consequence of his actions. Under the circumstances, we find no reason to disturb the Carrier's removal action in this case.

AWARD:

Claim is denied.

James F. Searce  
James F. Searce  
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, 19