

PUBLIC LAW BOARD 1837

(MW-MUN-77-51)

Case No. 7

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 claimant M. T. Brown.
2. The claimant be restored to service with seniority and all rights 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:

According to the record presented, the Claimant was an Extra Gang Laborer assigned to the "R-2 Rail Gang" at the time of events germane to this dispute. Per the Carrier, he was absent on April 13, 14, 22 and 25, 1977 without prior approval or proper authority. A hearing was originally scheduled for May 6, 1977, but was postponed until May 19, 1977. Documentation affirmed

that the Claimant was properly apprised of the rescheduling; however, he failed to appear without informing either the Organization or the Carrier of his whereabouts. The Organization's request for a postponement being denied by the hearing officer, the investigation ensued. The Claimant's removal was the result. After such events took place, the Claimant asserted he sustained a "head injury" on May 18, 1977 and thus was not able to attend the hearing; a doctor's statement was offered in that regard stating:

"[the Claimant] has been under my care from 19 May to 24 May and is able to return to school/work on _____.

"Remarks: Under Dr. Batkins care at the time of injury."

Signed Dr. [illegible] Dated July 11, 1977

(Note: Underlined portions handwritten, otherwise a printed form)

Also proffered after-the-fact were statements by associates of the Claimant outlining various reasons for his inability (as well as theirs) to be able to get to work on the dates in question. The Carrier rejected all such offerings.

The Organization asserts the Claimant was denied his rights to a fair hearing and that the Claimant submitted sufficient proof of his inability to report per the doctor's statement and other documents. The Organization asserts disparity of treatment of the Claimant vis a vis other employees absent on the same dates

but who drew no such penalty, pointing out that they rode together.

As to the Organization's claim of disparity, this Board has before it only the record of the Claimant; we cannot divine the status of the other employees who also may have been absent at this time but are obliged, instead, to assess the case as put before us. We note that he had camp cars available to him which would have ensured his presence near the work site; when an employee choses to arrange his own living quarters in lieu thereof, he also bears the burden to be at work on time. We find merit to the Carrier's disdain for the Claimant's proffer of a medical excuse -- well after the fact -- and certainly without any reasonable detail to affirm his claim of incapacity so severe as to render him unable to advise the Carrier of his whereabouts.

In sum, we find no basis to disturb the Claimant's removal.

AWARD:

Claim is denied.

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 at Atlanta, Ga this 12 day of Aug, 1941