

NATIONAL RAILROAD ADJUSTMENT BOARD

SPECIAL BOARD OF ADJUSTMENT

PUBLIC LAW BOARD NO. 1837

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

VS

NORFOLK and WESTERN RAILWAY CO.

CASE NO. 34

(BVE-77-83)

NICKEL PLATE, LAKE ERIE AND WESTERN,  
AND CLOVER LEAF DISTRICTS

CLAIM OF THE SYSTEM COMMITTEE THAT:

1. The carrier violated the effective Agreement dated February 17, 1977, when it dismissed claimant M. A. Jones.
2. The dismissal of the claimant was arbitrary and capricious. The carrier failed to exercise discretion and fair judgment in assessing the discipline. The claimant now be restored to service with seniority and benefits 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 are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended, and the Board has jurisdiction over the dispute involved.

OPINION OF THE BOARD:

The Claimant was a four-year veteran employee at the time of events germane to this dispute. After investigation he was removed from service for five (5) absences in July, six (6) absences in August, and eighteen (18) absences in September - all in 1977. According to the Carrier letters were sent to the Claimant on three (3) dates in July of that year - 13, 15, and 25. Per the Carrier, the grievant worked at least one day in September, 1977 and gave no notice that he would not be able to report. According to the Claimant he afforded the Carrier medical statements for his absences he might have had in July and August and notice of his inability to report otherwise. He asserts he worked regularly in

July and August; he presented his check stubs for those periods at the investigation to substantiate such a claim. The grievant denies having worked any days in September, and at the investigation, presented a doctor's statement to explain his absences during that month. The Claimant asserts he advised the appropriate office ahead of time that he would be absent for an indefinite period in September, 1977, and felt no need to contact the Carrier further. Insofar as receipt of the warning letters from the Carrier is concerned, the Claimant asserts that, while they may have been dated separately, he received them all at the same time.

While this Board finds merit to the Carrier's basis for discipline, we find the extent administered as excessive. We are satisfied that the grievant produced sufficient evidence to explain his absences in September, 1977, although obviously there is no way to assess his claim of having notified the Carrier ahead of time. Neither can this Board resolve the question as to whether the Claimant was or was not on duty on the days in July or August, 1977 for which he was charged. (In that regard, the presentation of a check stub does not establish any conclusive proof unless it differentiates regular from overtime pay.) We note, however, that the Carrier sent three (3) letters in July — the timing and sequence of which the Organization disputes, but none in August or September.

In consequence thereof we shall order that the Claimant be restored to duty immediately.

## AWARD

The Agreement was violated in that dismissal was excessive; the Claimant is returned to duty immediately with full seniority and all other rights unimpaired but without back pay for time lost.

James J. Sciarra  
Neutral Member

H. C. Edwards  
Carrier Member

W. E. LaRue  
Organization Member

Signed this 1<sup>st</sup> day of June, 1981

in Washington, D.C.