

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

PUBLIC LAW BOARD 1837

(MW-FIW-77-14)

Case No. 36

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement dated February 1, 1951, on January 25, 1978, when it dismissed claimant T. R. Zimmerman.
2. The dismissal of claimant was excessive, 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, less any earnings in the service of the company.

FINDINGS:

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

The carrier and the 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:

Claimant is classified as a Welder-Helper with a seniority date of March 19, 1971. The Claimant was absent from duty from August 17, 1977, to October 13 of that year; he was also off without authority on November 29, 1977, and walked off the job on December 1, 1977. According to the Carrier, it considered prior discipline involving a thirty-day actual suspension for absenteeism earlier in 1977. According to the Claimant, he thought he had been

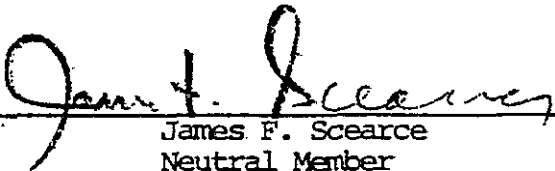
fired -- although he had no official word to that effect -- and thus failed to return to duty on August 17, 1977. He admits being absent on November 29, but contends he told the Agent he was leaving early on December 1, 1977.

This Board finds no error on the Carrier's part in adjudging the Claimant's responsibility for his absence. If the Claimant thought he had been terminated, it was incumbent upon him to inquire of the Carrier as to the validity of such event. Neither did the Carrier err in considering prior discipline to determine the extent of discipline to assess in this instance.

However, we note this employee was of relatively long service; further, he was candid in recognizing his fault in the period of extended absence. Therefore we shall direct that the Carrier give him one last chance to demonstrate his worthiness as an exemplary employee. The Claimant would do well to capitalize on this opportunity.

AWARD:

Claim is denied in principle; however, the Claimant shall be afforded a last chance opportunity for employment, reinstated with full seniority and other rights unimpaired but without back pay for time lost.


James F. Searce
Neutral Member


G. C. Edwards
Carrier Member


W. E. LaRue
Organization Member