

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement on September 28, 1976, by dismissing Extra Gang Laborer Michael Hart without a fair and impartial hearing.

2. Claimant Michael Hart be reinstated with seniority, vacation and all other rights unimpaired and that Carrier pay him for all money loss suffered by him.

FINDINGS: This Board upon the whole record and all the 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.

OPINION:

The Claimant entered service on July 22, 1976. Rule 1 - Seniority of the applicable Agreement in effect between the parties provides that:

"(a) Seniority begins at the time the employee's pay starts when last entering service, providing his application for employment has been approved and he has met the company's requirements for persons entering the service. The application for employment will be approved or rejected within 30 days from date service is first performed. Seniority will be restricted to the seniority districts, as hereinafter provided, on which seniority has been established."

By certified letter dated August 20, 1976, the Division Engineer advised the Claimant of his being separated from service; such letter was duly received and signed for the following day,

August 21, 1976 -- well within the 30-day time limit. Such action was conveyed to the Claimant's immediate supervisor -- a Gang Foreman.

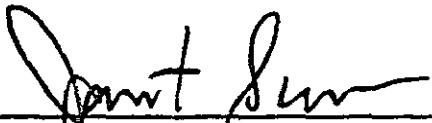
Apparently unbeknowns to the officer who initiated removal, this subordinate official (Gang Foreman) retained the Claimant on duty for an additional 39 days, at which time his presence was discovered and he was removed from service.

The Carrier contends the Claimant was given constructive notice of his unacceptability within the 30-day grace period recognized under the Agreement and that action of this subordinate official -- who lacked the authority to ignore this decision -- does not alter its applicability. The Organization contends that the Claimant, having been retained beyond the 30-day period for whatever reason, is entitled to a hearing in keeping with the provisions of Rule 22; essentially, the Organization asserts the Carrier's action is disciplinary in nature requiring an investigation and a hearing in order for the Carrier to substantiate its actions. We are not so moved. There can be little doubt that the Carrier initiated its right to remove the Claimant within the 30-day period recognized by both parties under the Agreement. It is also clear that the Claimant received such Notice. The question here is whether a subordinate official can overturn the Carrier's decision to exercise its rights to separate an employee within the probationary period. We think not. It is not reasonable to conclude


that management can always be aware of the actions or inactions of subordinate members of its supervisory cadre which tend to run counter to its clearly set out intentions otherwise. We would be in a substantially different position here if the actions were reversed, i.e. if a higher member of management had unilaterally reversed a decision by a lower echelon member without so notifying him, particularly if such lower member was in a direct supervisory relationship with the higher member. Under those circumstances, we might be disposed to hold the opposite. But there is no showing here that the Gang Foreman had the authority to refute his supervisor's decision. Whatever other outcome resulted of such indiscretion on the part of the Gang Foreman, it does not alter the fact that the Carrier, with both intent and purpose, did properly and constructively notify the Claimant within the 30-day period of his unacceptability to continued employment. Essentially, we conclude that the Carrier's actions come under the provisions of Rule 1 and not Rule 22; thus the Agreement was not violated in the separation of the Claimant.

AWARD:

Claim is denied.


James F. Scearce
Neutral Member


G. C. Edwards
Carrier Member


Fred Wurpel, Jr.
Organization Member

Dated this 15th day of Feb. 1980 at Cleveland, Ohio.