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

PUBLIC LAW BOARD 1837

(MW-BVE-77-85)

Case No. 44

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement dated February 1, 1951, on November 17, 1977, when it dismissed claimant R. B. Molina from service.

2. The dismissal of 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 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 was classified as a Laborer with about five months service at the time of his removal. Of hispanic origin, the Claimant was apparently incapable of communicating in English.

For the period of July 1 to September 23, 1977, the Claimant was absent thirteen full days and partially absent four or five other days; the Claimant admitted as much at the hearing through his interpreter. The Claimant contends he was sick one such day. According to the Carrier, the Claimant offered explanations for two such absences.

According to the Organization, the Carrier was obliged to overcome the language problem and that the Claimant was not properly apprised of the consequence of such continued absenteeism. It also asserts error in the conduct of the investigation.

We are not moved by the Organization's contentions of error by the Carrier. The Carrier may have been ill-advised in hiring an individual who might have a problem in receiving instructions, but the record evinces that one or more fellow employees were able and available to effect such translations. The Claimant offered absolutely no explan ation (to direct questioning that was translated) as to his whereabouts on the other dates in question. It is asking too much to presume that the Claimant would not be aware he was obliged to be regular in attendance. Under the circumstances, we affirm the Carrier's actions.

AWARD:

Claim is denied.

James F. Scearce
Neutral Member

G. C. Edwards
Carrier Member

W. E. LaRue
Organization Member

Dated at Washington DC this 1 day of June 1981