

PUBLIC LAW BOARD NUMBER 1837

Case Number 56

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

1. The carrier violated the provisions of the Effective Working Agreement dated February 1, 1951, when it refused to allow Claimant R. L. Weyer to work his regular assignment on November 16 and 18, 1976, thereby the carrier assessed him discipline without a fair and impartial investigation.
2. Claimant R. L. Weyer, having reported for his regular assignment on the dates in question and was available to perform service, be paid for sixteen (16) hours at his respective straight time rate of pay for the unjust treatment.

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

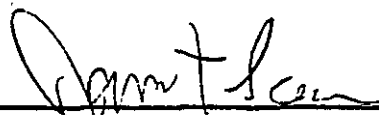
While the facts in this case are in contention, there is sufficient evidence to permit this Board to draw certain conclusions. The Claimant was not available for duty in a reasonable time on November 16, 1976 after having been absent from duty the previous day. There is no requirement that the Carrier permit an employee to pick and choose his own starting time for a day's work and where, as here, the Claimant was unavailable for assignment at his assigned start time, he is not entitled to do so later. The events on November 18, 1976 are less conclusive. According to the Roadmaster, the Claimant did not show up for work on that date at all; in contrast, other employees attested to his reporting for duty, but being denied the right to start work either for no reason or because he was a few minutes late.


We are persuaded that the Carrier's version of events on November 16 should prevail, but are unconvinced in that regard for November 18, 1976. We shall order compensation at the appropriate rate for the latter date due to a sufficient doubt raised by the Carrier's account of events on that date. We find no merit to the Organization's claim that Rule 22 relative to a hearing for disciplinary actions was violated. We also suggest to the Claimant that

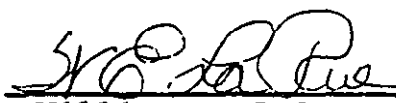
this Board's conclusions for November 18, 1976 would have been different given a more substantial showing of his not being at work timely.

AWARD:

The record lends greater weight to the claim that the Claimant was at least available for duty on November 18, 1976; compensation is ordered as per the Opinion.


James F. Searce
Neutral Member


E. N. Jacobs, Jr.
Carrier Member


William E. LaRue
Organization Member

Dated March 24, 1982 at Philadelphia, Pa.