

PARTIES TO DISPUTE:

PLB 1837
AWARD 8
MWD 76-15

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

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement dated April 1, 1951, on June 8, 1976, by unfairly and improperly dismissing Claimant David L. Winkhart from service.

2. Claimant shall be reinstated to Carrier's service with all rights unimpaired and that he be compensated for all wage loss suffered by him, in accordance with Rule 19 (F).

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 herein had between 18 months and two years of service when on April 19, 1976, according to the Carrier, he purportedly relinquished his position as a Tie Insertor Operator. The incident leading to this dispute occurred at about 2:30 p.m. on that date at Williston, Ohio, when the Carrier determined the need to move the Tie Gang and its equipment to a new location -- Bellevue, Ohio. The Claimant was advised to "tram" the Tie Insertor to which he was assigned to the new location; he refused, indicating apparently what he considered an overriding need that he had to avail himself of the only ride available to his personal home.

(It is noteworthy that the Gang had a camp car available to it, but the Claimant had opted instead to live at home.)

When advised that he would have to move the piece of equipment, the Claimant purportedly stated that he supposed he would have to quit if there was no alternative. His supervisor sought out another employee to move the equipment, and the Claimant was asked by such volunteer how to operate the piece of equipment sufficiently to tram it to the new location; the Claimant apparently gave such information before departing. The Claimant did not report for work the following day, contending he took a personal leave day. He did report the day thereafter (April 21, 1976) and was refused an opportunity to work on the basis that he had resigned. The Organization contends that, even if the Claimant resigned orally, this was not sufficient in that a formal action was required; thus, it claims the Carrier initiated a disciplinary removal against the employee. The Carrier contends this case is outside the disciplinary provision and, therefore, no need exists for it to demonstrate any basis for the Claimant's removal; instead, it asserts the Claimant "removed" himself by his voluntary departure from his job duties and his statement to that effect.

It has long been settled that an employee who pronounces his intention to resign and then follows such utterance with action commensurate with such intent exposes himself to the consequences. Here, the Claimant was issued an order that was both

responsible and reasonable -- to move the piece of equipment to which he was assigned; there is no showing that such order was arbitrary or capricious in nature, nor that the Claimant was somehow being discriminated against. Trammeling the Tie Inserter was clearly within his purview of responsibility, and the record indicates that the Claimant had assumed the position of Tie Inserter Operator only recently prior to this incident; we must assume he bid the job with the intent to meet all of the requirements of the position. He could not "pick and choose" those duties he might wish to perform, even if some such assignments inconvenienced him, as in this case. We are satisfied that his request to be relieved of this duty was considered and that no reasonable alternative was available to the Carrier. It may well have been that the Carrier would have instituted disciplinary action against the Claimant for his refusal to comply with instructions, but his utterance followed by his departure foreclosed that necessity. We are led to no other conclusion than that the Claimant voluntarily took the step which stands as a resignation predicated upon his unwillingness to perform a properly assigned and reasonable work directive. The Agreement was not violated.

AWARD:

Claim is denied.

James F. Searce

James F. Searce
Neutral Member

G. C. Edwards

G. C. Edwards
Carrier Member

Fred Wurlpel, Jr.

Fred Wurlpel, Jr.
Organization Member

Dated this 1st day of February, 1980 at Cleveland OH