

PUBLIC LAW BOARD NO. 1838

Award No. 23

Case No. MW-BL-77-100

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim The Brotherhood requests that Laborer Terry Lee Cain be restored to service of Norfolk and Western Railway Company, with vacation, seniority, and all other rights unimpaired, and that he be paid in full for all time lost as a result of being dismissed.

Findings The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, was hired as a Laborer, September 22, 1976. He alleged, on or about October 28, 1976 that he had sustained an off-duty injury to his back which prevented his performing his normal duties. The Roadmaster, as a result thereof, assigned him to do janitorial work in the Carbo Yard Office.

The General Yardmaster contacted the Roadmaster, on December 3, 1976, and asked him to replace Claimant with another Section Laborer who could clean switches in the yard and transport train crews to various locations as had been the practice in the past.

Claimant called the Roadmaster at his office, on December 3,

1976 and advised that he (Claimant) wasn't able to do the work of taking care of the switches. The Roadmaster advised that he would get Claimant an appointment with the doctor and that he would be in Carbo sometime that morning to talk with him.

The Roadmaster came to the yard office, at Carbo, about 10:30 AM. As a result of the ensuing conversation that took place between Claimant and his Supervisor, Claimant became insubordinate and used profanity towards his Supervisor. He became embroiled in what, from all appearances, was an altercation. Claimant was removed from service as a result.

The Division Engineer sent Claimant a notice dated December 6, 1976, advising:

"Your employment relationship with the Norfolk and Western Railway Company has been terminated effective December 3, 1976.

Termination was a result of your insubordinate actions and use of profane language towards your immediate supervisor, Roadmaster S. C. Hughes at Carbo Yard Office at approximately 11:20 AM, December 3, 1976."

A formal investigation was requested and granted. It was held January 28, 1977. As a result of such investigation the decision of dismissal was upheld.

The Board finds that there was sufficient evidence adduced to support the conclusion reached by Carrier as to Claimant's culpability for the offense with which charged. Claimant's actions clearly were insubordinate and contra those expected of any employee. The offense committed was serious and not one to be tolerated if the employer-employee relationship is to be properly maintained.

The discipline, in the circumstances, is held to be reasonable.

As pointed out in Third Division Award 11803 (Dolnick):

"It is a well established principle of this Division that a disciplinary action will not be set aside unless the Carrier was arbitrary, vindictive or acted in bad faith. It is also the position of this board that we cannot substitute our judgment for the Carrier. (Awards 11018, 11324 and 11531 (Dolnick, 10642 Labelle), 10595 and 10596 (Hall and others)

Carrier was not arbitrary or vindictive and did not act in bad faith. There is substantial evidence on the record to support the charge that Claimants were guilty of insubordination. Carrier has met the requisites of burden of proof to support the suspension penalty."

In the circumstances this Claim will be denied.

Award            Claim denied.



A. D. Arnett, Employee Member



G. C. Edwards, Carrier Member



Arthur T. Van Wart, Chairman  
and Neutral Member