

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Norfolk and Western Railway Company

Statement of Claim: 1. Carrier violated the effective Agreement by unjustly and unfairly dismissing Section Laborer Travis E. Harry from Carrier's service on June 4, 1975.

2. Claimant Harry shall be reinstated to service with pay for all time lost and with vacation, seniority and all other rights unimpaired.

Findings: The Board finds, after hearing upon the whole record and all evidence 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, a Section Laborer, for some six (6) years, was dismissed from service June 4, 1975 for his habitual absenteeism without either notifying his Supervisor or receiving permission of his Supervisors, therefore in violation of Agreement Rule 25 (Now Rule 26) of the Maintenance of Way Agreement. An investigation, as requested, was held thereon. As a result thereof the discipline imposed was upheld.

Rule 25 - "Detained From Work" reads:

"An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. In case an employee is unavoidably kept from work, he will not be discriminated against. An employee detained from work on account of sickness or for any other good cause shall notify his foreman or the proper officer as early as possible."

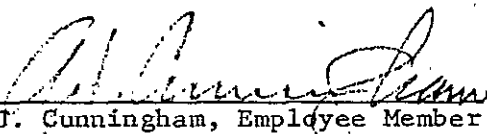
The record reflects that claimant was put on notice several times, orally and in writing, as to the frequency of his absenteeism as well as his consistent failure to give notice thereof or his failure to request permission therefor. Such failures, whether useful or otherwise, are deleterious to the efficiency and safety of Carrier's operations. Such employee failure violates the implicit promises and obligations contained in the employer-employee relationship. As was pointed out in Third Division Award 18387.

"The employment relationship and the contract itself are promises on the understanding that employees will perform the work for which they were employed...Additionally, the contract clearly spells out on what days and under what circumstances employees shall be excused from reporting to work, demonstrating the unambiguous intent of the parties that, except where provided by contract, employees shall be expected to perform their duties on each day called for by the bulletins under which they work. It follows that if the Carrier has a right to rely on employees performing their duties on each day called for by their bulletins, the Carrier has a concomitant right to be notified when those duties will not be performed so that alternative-measures may be taken if necessary to carry on the business of the Carrier."

Consequently, the Board finds that Claimant was accorded due process, that the record contains sufficient evidence to support Carrier's conclusions and that the degree of discipline imposed, on the basis of Claimants service record, was not unreasonable.

In the circumstances this claim will be denied.

Award: Claim Denied


A. J. Cunningham, Employee Member


G. F. Edwards, Carrier Member


Arthur T. Van Wart, Chairman and
Neutral Member

Issued at Wilmington, Delaware, May 1, 1978.