

Award No. 60

Case No. 59

Carrier File MW-PO-80-1

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement Claim on behalf of Mr. J. M. McKenzie account his dismissal
of from service as a result of investigation held on January 21,
Claim 1980.

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 J. M. McKenzie was employed as a carpenter on Mason Gang No. 1, Scioto Division. On January 4, 1980 Claimant was noticed by his Supervisor J. R. Shaver that he was dismissed from Carrier's service for being absent without permission in violation of Rule 26. Claimant requested, pursuant to the schedule rule, an investigation, same being held on January 21, 1980. Under date of February 8, 1980 Claimant was advised that the charges against him had been sustained and he was permanently dismissed from Carrier's service.

The transcript of the proceeding below discloses that on January 2, 1980 Claimant requested of his Supervisor, Mason Foreman Marcum permission to take vacation on January 3 and 4, 1980. The record discloses that Claimant was personally informed by Marcum that he could

not take vacation on the requested date because of such short notice and the fact that he was beginning a vacation on Monday, January 7, 1980.

Further, the record discloses that Claimant testified that at approximately 2:00 AM on January 3, 1980, he allegedly became sick while in bed on the camp cars. Claimant asserted that he woke up a fellow employee by the name of Presley, and further advised that he doubted whether the Presley boy would remember his having awoken him. Claimant advised that he did not attempt to contact Mr. Marcum before going home, that he knew that Marcum was aboard the camp cars.

Claimant alleged that he did not want to disturb Marcum at 2:30 in the morning, rather, he waited until he got home and his wife drove some five miles the following morning to attempt to contact the company to advise them of Claimant's alleged illness. Claimant testified that he did not go to a doctor until the following Monday, and, whereupon his doctor is alleged to have advised him that he was suffering from an attack of ulcers. No medical certification was offered to support Claimant's contention.

Supervisor Earsul Marcum testified that Claimant came to him to seek permission to be off the Thursday and Friday before the weekend he was scheduled to begin his vacation. Foreman Marcum had been requested by Claimant to begin his vacation on that Thursday. Marcum spoke to Supervisor Shaver advising of Claimant's request to begin the vacation the following morning. Shaver advised Marcum that the amount of time for notice was too short, that Claimant could begin his vacation on the following Monday. That information appears in the transcript to have

been communicated to Claimant without misunderstanding or confusion and was so acknowledged by Claimant.

Nevertheless, Claimant contended he became ill at 2:00 AM, left the work site without permission, and failed and/or neglected to contact a supervisor until the following morning.

Organization advances the claim on the basis that Claimant was not afforded a fair and impartial hearing, that Claimant's prior service record was adversely and unfairly used against him.

Claimant's prior service record discloses that on October 1, 1973 Claimant received a letter relative to his absence for work advising him that said occurrence would not be tolerated by Carrier.

Under date of October 11, 1976 Claimant received a thirty day suspension (deferred) for excessive absenteeism.

On March 6, 1979 Claimant again received an admonition for his absences, and, on March 20, 1979 Claimant was assessed another thirty (30) day (deferred) suspension for excessive absenteeism.

Under date of March 23, 1979 Claimant was given a thirty day actual suspension for excessive absenteeism.

The record also discloses that Claimant's supervisors testified to having counselled Claimant repeatedly on different occasions concerning his failure to protect his work assignment.

The Board finds that the record fails to reflect any evidence of prejudice by the inclusion of Claimant's past service record in assessing discipline. There is ample, credible testimony which Carrier chose to accept concerning the circumstances under which Claimant chose to leave Carrier's property without permission. Claimant's version of


having become ill, requiring him to go home to seek medical assistance when juxtaposed with his request to take vacation, which was denied, on the very day that he chose to leave the property without permission is, at the very least, suspect. Particularly when viewed by his failure to produce any medical documentation that he had, in fact, sought medical assistance for an ulcer attack.

Carrier, as the trier of the facts, chose to believe its witnesses and to draw such negative inferences as were permissible in those circumstances against Claimant's version of the events. We can find no abuse of Carrier's discretion therein.

Claimant has had ample opportunity in the past to correct his unacceptable work performance. Carrier has repeatedly afforded Claimant, by letter and by oral counselling with his supervisors, the opportunity to provide meaningful, reliable service to his company. Claimant chose to ignore those opportunities. On the record before us we can find no mitigating circumstances that would warrant intrusion by the Board into the results. If Carrier chooses to consider Claimant for restoration to service on a leniency basis, that is wholly a matter between Carrier and Organization and not a proper function of the Board.

AWARD: Claim denied.


A. D. Arnett, Employee Member


E. N. Jacobs, Jr., Carrier Member


A. Thomas Van Wart, Chairman
and Neutral Member