

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 unfairly and unjustly dismissing Section Laborer Davis on May 16, 1975.

2. Claimant Davis shall be reinstated to service, paid for all time lost, 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 since June 7, 1973, was dismissed from service May 16, 1975, for his constant absenteeism which resulted in violation of Agreement Rule 25 and for failing to notify proper authority in connection therewith.

Rule 25 (now Rule 26) 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.

A subsequent investigation held at Claimant's request failed to cause any change in the discipline imposed.

The Board finds that Claimant was accorded due process. It was not error

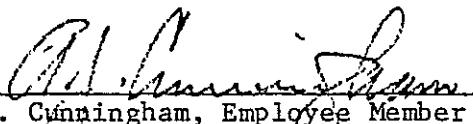
when Carrier refused to consider evidence not presented at the June 6, 1975 hearing, in the absence of a proviso therefore made at that time. Claimant was given sufficient notice of the charges brought against him, he enjoyed the right of representation, of cross examination of witness and exercised his right of appeal. There were no procedural exceptions taken at the hearing.

The Board also finds that there was substantial evidence adduced to support Carrier's conclusions of Claimant's culpability concerning his poor record of being absent without notifying the proper authorities. Said record reflects that between July 16, 1974 and May 16, 1975, a period involving some 231 working days, Claimant was absent 131 days. Claimant on 51 of such days either requested permission therefor or presented a doctor's slip upon his return to duty. However, on the remaining 80 days Claimant failed to request permission to be off, he failed to call in, or, to present a reason for such absence upon returning to duty. During all this period Claimant had been warned, orally and in writing, about his attendance behavioral pattern with no correction resulting therefrom.

The Board on this record fails to find that the discipline imposed was unreasonable. In the circumstances this claim will be denied.

Award:

Claim Denied.


A. J. Cunningham, Employee Member


G. G. Edwards, Carrier Member


Arthur T. Van Wart, Chairman and
Neutral Member

Issued at Wilmington, Delaware, May 1, 1978.