

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The discipline assessed 4-R Rail Gang Employees H. E. Smith, T. J. Minor and M. J. Hall was without just and sufficient cause, and on the basis of unproven charges. (Carrier's Files D-11-3-322, D-11-3-320 and D-11-3-319)
2. Employees H. E. Smith, T. J. Minor and M. J. Hall shall be allowed the remedy proscribed in Rule 19(d).

OPINION OF THE BOARD:

On May 5, 1980, the Carrier directed the Claimants to appear at an investigation on the following charge:

- "1. Your responsibility in connection with absenting yourself from your work assignment without authority on the following dates in violation of Rule 14 of the General Regulations and Safety Rules effective June 1, 1967. Mr. Smith: April 30, May 1, 2, 1980. Mr. Minor: May 1 and 2, 1980. Mr. Hall: May 1 and 2, 1980.
2. Your alleged actions on April 30, 1980 at DeWitt, Iowa which resulted in the Transportation Company being subjected to criticism and loss of goodwill in violation of Rule 7 of the General Regulations and Safety Rules effective June 1, 1967."

Subsequent to the hearing, the Claimant Smith was given a sixty-day suspension and Claimants Minor and Hall were given 30-day suspensions.

The hearing transcript reveals with little doubt that the Claimants were arrested on the night of April 30, 1980, outside the American Legion Hall in DeWitt, Iowa. The Claimants had been at the Hall

that night for a union meeting. They later plead guilty to a reduced charge of possession of stolen property, reportedly frozen meat from the Legion Hall. The transcript also reveals that Mr. Smith missed work April 30, May 1 and 2 and Minor and Hall missed May 1 and 2 as a result of being in jail.

The Organization argues that the Claimants cannot be guilty of being absent without permission inasmuch as Mr. Smith's girlfriend called the Carrier the morning of May 1st and notified the Carrier of the absences for all three men. Regarding the second portion of the charge, the Organization argues that there isn't any evidence that the Claimants brought discredit to the Carrier. It is the contention of the Organization that the evidence relied upon by the Carrier in this respect is hearsay evidence and deserves no weight.

It is the contention of the Carrier that the evidence is substantial and the discipline more than reasonable. Moreover, they argue that being in jail, even if the Carrier is notified, does not excuse an employee from his employment responsibilities.

In reviewing the evidence regarding the first charge, it is the conclusion of the Board that there is more than substantial evidence that the Claimants were absent without authority on the dates charged. We agree with the Carrier and it has been stated before that being in jail under circumstances such as this is no excuse for failure to protect one's assignment. Regarding the second portion of the charge, it is noted that the evidence in this regard is in fact hearsay evidence. Normally, hearsay evidence is not deserving of any weight but in this case the evidence as to the

criticism and loss of good will is attributable to people outside the control of the Carrier. This is not to say that it deserves full weight but it deserves some weight and there is enough evidence when this is coupled with the evidence on the first portion of the charge to conclude that the discipline is reasonable.

AWARD

Claim denied.



Gil Vernon, Chairman



J. D. Crawford, Carrier Member



H. G. Harper, Employee Member

Date: March 25, 1982