

PUBLIC LAW BOARD NO. 2960

AWARD NO. 62

CASE NO. 89

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of W. L. Harrison for alleged insubordination was without just and sufficient cause and excessive (Organization File 2D-3275; Carrier File D-11-24-99).
- (2) Claimant W. L. Harrison shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and the Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On August 13, 1982, the Carrier directed the Claimant to attend an investigation on the following charge:

"Your responsibility in connection with being insubordinate to Roadmaster D. A. Crawford on Friday, August 13, 1982."

Subsequent to the investigation, the Claimant was assessed the discipline now on appeal before this Board.

The Board has carefully reviewed the transcript. We note that in addition to the testimony of Roadmaster Crawford, the record contains an admission by the Claimant that he refused to comply with Crawford's instructions. Crawford testified that due to a track washout, he had to make arrangements to send available personnel to Willowbrook, which was on another Roadmaster's territory. He left a message with a clerk to have the Claimant call him. When the Claimant called him, Crawford informed him to pack a bag and "go south" to assist in putting the mainline back into service. When he was told to go, the Claimant, according to Crawford, said "No, I am not going. It is too short of notice. You will have to find someone else." Crawford then again explained the emergency nature of the situation and the Claimant refused again and said "I am sick anyway, so I can't go." Crawford then instructed the Claimant to go to Ankeny to unload ties, which he did. Crawford later contacted Harrison at Ankeny to see if he had changed his mind about going to the other territory. Again, the Claimant refused and Crawford requested the Claimant to report to his office immediately. Again, at the office when asked to go, the Claimant refused. Crawford then removed the Claimant from service pending the investigation.

Harrison clearly admits refusing to comply with Crawford's instructions. He claims, however, that this refusal was an uncontrollable outburst caused by not taking medication which had been prescribed to him for high blood pressure. He presented a letter from his doctor which stated in pertinent part:

"William Harrison is a patient in this office. He is  
being treated for Hypertensive Cardiovascular Disease.

Mr. Harrison has not been taking his high blood pressure medication. As a result of not taking his medication, he has had increased irritability, tempermental outbursts and elevated blood pressure.

I hope this information will be of help to you in evaluating any disciplinary action regarding the incident of August 13, 1982."

He also notes, as Crawford did, that he had contacted Crawford sometime after he was pulled out of service and told him that he had changed his mind about reporting.

The Board, based on the evidence, finds that there is substantial evidence to support the charge. Moreover, we are of the opinion that the Claimant's defense fails to justify his actions. The Claimant's failure to take his medication was at his own peril. Moreover, we are dealing with more than a simple temporary outburst. The Claimant was given multiple chances to comply with his Roadmaster's instructions before being removed from service. It was only after being removed from service that he regained his perspective. In view of this, his defense is difficult to accept.

The Organization argues that the discharge is excessive for an employee with seven years of service. The Carrier argues that the Claimant's past record justifies the discipline. They make reference to a short-deferred suspension and an actual suspension previously imposed for insubordination.

The Claimant's past record certainly lends support to the Carrier's arguments. However, we are not convinced that permanent discharge is appropriate and thus agree with the Organization that it is excessive. We believe the Claimant deserves one last chance to prove himself capable of complying with the requirements of employment, including the instructions of his supervisors. The Claimant should be on notice that if this Board were again faced with identical circumstances, we would have no choice but to

conclude that he was no longer interested or capable of fulfilling the responsibilities of employment.

In view of the foregoing, we direct the Carrier to reinstate the Claimant with seniority and other rights unimpaired, however without pay for time lost in accordance with the agreement.

AWARD: Claim is sustained to the extent indicated in the opinion.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: June 5, 1984