

PUBLIC LAW BOARD NUMBER 3530

Award Number: 112

Case Number: 112

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, W.V. McPherson, P.O. Box 613, Petersburg, VA 23808 was assessed a 60 day suspension for alleged conduct unbecoming an employee, failing to follow instructions of a supervisor and not being honest in a statement made to a supervisor. Claim was filed in accordance with Railway Labor Act and agreement provisions. Employee request suspension be removed from his record and pay for lost time with seniority and vacation rights unimpaired.

FINDINGS

Claimant entered the Carrier's service on August 8, 1951.

By letter dated July 28, 1988, Claimant was directed to attend a formal investigation on charges he engaged in conduct unbecoming an employee, failure to follow instructions and dishonesty. The investigation was held on September 27, 1988 after a postponement. By letter dated October 14, 1988, Claimant was suspended for 60 days based on evidence adduced at the investigation.

The issue to be decided in this dispute is whether Claimant was suspended for just cause under the Agreement; and if not, what should the

remedy be

On July 21, 1988, Claimant was working as a laborer at the Carrier's Kinney Yard, Lynchburg, Virginia. Roadmaster W. C. Agnor was Claimant's supervisor that day. There came a time when Assistant Roadmaster K. R. Bates asked Claimant to help him set up ramps on ramp cars. Claimant stated that he could not lift anything heavy and that he was on light duty. Bates asked to speak to Claimant. Claimant, who was within a few feet of Bates, turned and walked away from Bates, indicating orally that Bates was not his boss. Bates later checked with the personnel office and learned that there was no information as to Claimant's being on light or restricted duty.

The position of the Carrier is that Claimant was suspended for just cause under the Agreement. The Carrier contends that the evidence adduced at the investigation clearly shows that Claimant refused to follow Bates' instructions without justification and did so in a discourteous and dishonest fashion. The Carrier argues that its witnesses' descriptions of the events in question is more reliable and persuasive than Claimant's. Finally, the Carrier maintains that the 60 day actual suspension is justified in light of Claimant's prior record of discipline and Claimant's disrespect and dishonesty.

The position of the Organization is that Claimant was suspended without just cause. The Organization admits that Bates spoke to Claimant, but contends that Claimant is not guilty of failing to follow an order. The Organization maintains that Bates "asked" Claimant to stand still and speak with him, Bates did not "order" Claimant to do so. Therefore, Claimant's

action was not unbecoming. Further, the Organization contends that Claimant properly refused Bates' orders (if orders they were) because Claimant was under Agnor's supervision, not Bates', and was simply trying to do his job as Agnor ordered. Finally, the Organization maintains that the discipline is too harsh for the alleged offense involved.

After review of the entire record, the Board finds that the suspension of Claimant was for just cause under the Agreement.

The Carrier has sustained its burden of proving that there is substantive credible evidence in the record that Claimant refused Bates' order, was discourteous and was dishonest as to his duty status. These actions are clearly unbecoming conduct and cannot be justified. The Carrier has the authority to determine its work priorities. In a nonemergency situation, it is for managerial employees to determine who performs what work at what time; and if necessary, they must resolve any conflicting assignments among themselves. Likewise, in a civilized work environment, a request by a superior regarding performance of legitimate duties is the equivalent of an order. There is no requirement for supervisors to state "this is an order" for it to be treated as such. Similarly, supervisors must be just in their requests. Finally, there is no basis for falsification of work status.

As to the discipline, in light of the circumstances of refusal, discourteousness and dishonesty, the discipline was warranted and was neither arbitrary, capricious nor discriminatory.

AWARD

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Claim denied.

Mr. Bruno's

Neutral Member

Mr. Miller

Carrier Member

Bryce L. Hall

Organization Member

Date: FEB. 22, 1990