

PUBLIC LAW BOARD NO. 3530

Award No. 12  
Case No. 12

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM:

E.L. Ratliff, Assistant Crane Operator, 2451 State Rd. 132, New Richmond, Ohio 45157, was dismissed for allegedly being absent without permission. Employee request he be reinstated with full pay and all rights unimpaired.

FINDINGS:

On November 4, 1982, Claimant failed to report for work as assigned. On November 5, 1982, Claimant reported to work late. By letter dated November 9, 1982, Claimant was notified that he was dismissed from service for being absent without permission on November 4, 1982, for arriving late for work on November 5, 1982, and for being excessively absent and late for work during his working career. The Organization requested and was granted a hearing which was held on November 24, 1982. Carrier affirmed Claimant's dismissal after reviewing the evidence adduced at the hearing.

The Organization filed a claim protesting Carrier's decision and requesting that Claimant be returned to service with back pay for all time lost. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Public Law Board for resolution.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause, and if not, what should the remedy be.

The Organization argues that Claimant should not have been dismissed since his absence on November 4, 1982 was due to carbon monoxide poisoning, and because he notified the foreman of his illness as early as possible. It should first be noted that there is nothing in the record to support this version of events other than Claimant's testimony. However, even if it is assumed that Claimant's version of the facts is correct, there is no basis for reversing Carrier's decision. The November 9, 1982 letter of dismissal states that Claimant was dismissed for having been "excessively absent and late reporting for work," of which Claimant's absence and tardiness of November 4 and 5, 1982 were just the latest instances. It is well established that an employer may terminate an employee for repeated lateness and absence, even if the employee sometimes has valid excuses. The reason for this rule is that an employer is not obligated to keep an employee in service who cannot or will not reliably report for work as assigned. The rule applies regardless of the reasons the employee may have for being absent. In the present case, the record shows that Claimant was, during the latter part of his tenure with Carrier, absent approximately 30% of the time. Keeping in mind Claimant's service record, it is the opinion of this Board that Claimant was dismissed for just cause, and that the claim should therefore be denied.

AWARD:

Claim denied.

Nicholas Rimmer  
Neutral Member

C. A. Abbatto, Jr.  
Carrier Member

Bryce L. Hall,  
Organization Member

Date: 4/27Eh.84