

PUBLIC LAW BOARD NUMBER 3530

Award Number: 13

Case Number: 13

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Mechanic, Tommy Muncey, General Delivery, Oriskany, Virginia 24130, was dismissed from service for allegedly securing tools from the Company Storehouse at Roanoke, Virginia on June 11, 1982 without proper authorization. Employees request pay for time lost with vacation and seniority rights unimpaired.

FINDINGS:

Claimant was dismissed from his position as Roadway Machinist Helper effective June 15, 1982, for allegedly securing tools from Carrier's storehouse without authorization on June 11, 1982. At the Organization's request a hearing was held in order to investigate the charge, and on the basis of the evidence adduced during the investigation Carrier determined that Claimant should be assessed an actual suspension of 90 days. The Organization filed a claim protesting Carrier's actions and requesting that Carrier clear Claimant's record

and compensate him for all pay lost during his 90-day suspension. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

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

On June 11, 1982, Claimant was given a purchase document by Division Engineer-Maintenance D.L. Dale for the purpose of securing certain tools from Carrier's storehouse at Roanoke, Virginia. Upon arriving at the storehouse, Claimant informed Mr. C. Harris, the employee working there, that he needed other tools that were not listed on the purchase document. Harris told Claimant to pick up what he needed and that he, Harris, would put the class and item numbers of the tools on the purchase document. Claimant did so and then signed the document, which had also been signed by Dale at an earlier time. Claimant was then allowed to go on his way.

Carrier contends that since Claimant secured the additional tools without specifically obtaining Dale's authorization to do so, he therefore secured tools without proper authorization as charged. At the hearing, Lieutenant F. Dickerson of Carrier's Police Department, Assistant Superintendant of Materials, D.M. Whitlock, and Harris, the employee who issued the tools to Claimant, all

testified that it was common practice at the storehouse to add items to the purchase document and then have the individual requesting the additional items sign the document. This is exactly what occurred in the instant case. It therefore cannot be held that Claimant failed to comply with Carrier's authorization procedures.

The discipline assessed here would be inappropriate even if it could be held that Claimant secured the tools without proper authorization. The record shows that Claimant had never requisitioned tools from the storehouse before, and that he had no knowledge of authorization procedures. In addition, Claimant obtained the tools for use on the property, and they were never removed from the property. There is no evidence that Claimant was attempting to deceive Carrier or enrich himself at Carrier's expense. Carrier argues that Claimant was attempting to replace personal tools that had been lost on the job. Carrier has offered no evidence other than hearsay to show that Claimant knew there was anything improper about such an action; in any event, Claimant has not been charged with dishonesty, only with failure to comply with authorization procedures.

For the reasons stated above, it is the opinion of this Board that Claimant's suspension was not supported by just cause, and that the decision to suspend Claimant was therefore an abuse of Carrier's discretion. Accordingly,

the claim must be sustained.

AWARD:

Claim sustained. Carrier shall remove all evidence of the suspension from Claimant's record immediately, and shall compensate Claimant for all pay lost as a result of that suspension minus any outside income Claimant may have earned during the ninety (90) day suspension period.

Nicholas Kumar
Neutral Member

J. A. Whitell Jr.
Carrier Member

Byron L. Hall
Organization Member

Date: 1-28-85