

PUBLIC LAW BOARD NUMBER 3530

Award Number: 14
Case Number: 14

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Tie Gang Laborer, W.R. Hammond, Box 54, Vanceburg, Kentucky, 41179, was given a ten-day suspension for allegedly being absent from work on June 29, 1982, without permission. Employees request pay for time lost with seniority and vacation rights unimpaired.

FINDINGS:

On June 29, 1982, Claimant was scheduled to report for duty at 7:00 AM. Claimant did not report for work at the assigned time nor at any other time that day. As a result, Claimant was assessed an actual suspension of ten days for being absent from his assignment without permission on June 29, 1982. The Organization requested and was granted a hearing for the purpose of investigating the charge. On the basis of the evidence adduced during the investigation, Carrier determined that Claimant had been absent from work without permission as charged, and that the discipline assessed was justified. The Organization filed a claim protesting Carrier's actions and requesting that

Claimant be compensated for time lost during his suspension with seniority and vacation rights unimpaired. 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.

At the hearing, Claimant testified that his truck broke down while he was on his way to work, and that he notified Chief Clerk R.T. LeMaster that he would be unable to report for work. A review of Claimant's testimony as a whole shows that when his truck began overheating, he decided to attempt to return home rather than attempt to proceed to the assembly point. Claimant did not contact Carrier prior to deciding to return home. The record also shows that though Claimant did in fact contact LeMaster, he did not at any time request permission to be absent from work on June 29, 1982.

Carrier's Rule 26 states in part that an employee "desiring to be absent from service must obtain permission from his foreman or the proper officer." While Claimant was prevented from reporting to work on time by the breakdown of his truck, the decision not to attempt to report for work at all was Claimant's alone. Since Claimant failed to obtain permission for his absence, he violated

Rule 26.

The Organization argues that Claimant did not receive a fair hearing since the hearing officer continued the investigation after receiving many objections from Claimant's representative. However, the Organization has not attempted to show how this action prejudiced Claimant's case. The Organization argues further that evidence of Claimant's past record was improperly admitted at the hearing. Such evidence is improperly admitted only where it is introduced for the purpose of determining an accused employee's guilt; and in the instant case, there is no evidence that Claimant's record was admitted for any purpose other than to determine whether the particular penalty assessed was excessive. It therefore cannot be held that the admission of Claimant's past record was improper.

It is the opinion of this Board that Claimant received a fair and impartial hearing, and that the record contains clear and convincing evidence of Claimant's culpability. In view of Claimant's disciplinary record, it cannot be held that Claimant's ten-day actual suspension was harsh or excessive. Accordingly, the claim must be denied.

AWARD:

Claim denied.

Nicholas Pumis
Neutral Member

J. A. Mattle, Jr.
Carrier Member

Bryce L. Hale
Organization Member