

PUBLIC LAW BOARD NO. 3530

Case No. 22
Award No. 22

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

And

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

Investigation - P.O. Malone. Pay for eight (8) hours lost on July 8, 1982.

FINDINGS:

Claimant, at the time of the incident in question, was employed by the Carrier as a Laborer at Piketon, Ohio.

On July 8, 1982, at approximately 7:40 p.m., the Carrier sent Claimant home and did not permit him to work because of his alleged tardiness.

On September 10, 1982, a formal investigation was held by the Carrier. As a result of the investigation, Carrier found Claimant guilty of tardiness and upheld the dismissal from work for the date of July 8, 1982.

The issue to be decided in this dispute is whether the Claimant was justifiably stopped from performing service by the Carrier on the date in question.

The position of the Carrier is that the Claimant failed to protect his assignment on the date in question, and therefore was properly dismissed from service for that date. The Carrier first notes that the Claimant admitted he was late when he stated "I arrived there approximately between 7:30 and twenty till 8:00". Claimant's assignment called for him to be at work by 7:00 a.m.

The Carrier contends that this was not a discipline case at all. The Carrier notes that the Claimant arrived well after his assignment was due to start, and therefore could not expect for his assignment to be reserved. The Carrier argues that it has no obligation to keep an assignment open in anticipation that a tardy employee might show up. The Carrier concludes that its actions on the date in question were precipitated only by the Claimant's failure to protect his assignment.

The Carrier further contends that Claimant did not give any advance notice concerning his tardiness, and that Carrier had to fill his position. The Carrier reiterates that it was not unreasonable under the circumstances to dismiss Claimant from service on the date in question. The Carrier further maintains that a loss of one day's pay and a warning letter cannot be viewed as excessive discipline under the circumstances, even if it is to be considered a disciplinary action.

Finally, the Carrier denies that it violated the Agreement by not sending the Organization a copy of the transcript of the investigation until November 12, 1982. The Carrier first

notes that Rule 35, cited by the Organization, does not even address the issue of transcript delivery. The Carrier further notes that Rule 34, which covers transcripts, does not provide for any sanctions for failure to timely supply a transcript.

The Organization first argues that the only reason Claimant was late on the date in question was because his Foreman neglected to tell him where his assignment was. The Organization therefore contends that Claimant's tardiness was through no fault of his own.

The Organization further notes that Claimant had been in the Carrier's employ for six years, and in those six years had never once been late for an assignment. In light of Claimant's prior record, it is the Organization's position that his discipline was unwarranted. The Organization argues that a warning letter is the usual penalty for a one-time offense, and that Claimant, at most, should have received such a warning.

The Organization finally Claims that the Carrier violated the Agreement by not timely delivering a transcript of the investigation. The Organization argues that Carrier's late delivery of the transcript violated Rule 35 of the Agreement.

After review of the entire record, the Board finds that the claim must be denied.

The Carrier has established that the Claimant was late for his assignment on the date in question. The Claimant

admitted in his testimony that he was between 30 and 40 minutes late. We do not find Claimant's excuse concerning his lack of knowledge of the assignment persuasive. It is the Claimant's responsibility to know where he will be assigned. If he was unsure of that day's assignment, he should have arrived in time to ascertain where his assignment would be.

We agree with those Awards cited by the Carrier wherein it has held that the Employee risks the loss of assignment by not covering it at the designated time. The Carrier is under no obligation to hold an assignment open when an employee is significantly late. The Carrier was within its rights to replace or work without the Claimant when Claimant failed to cover his assignment.

We recognize that Claimant's service record has in the past been exemplary. However, we do not feel that under the circumstances the Carrier acted unreasonably toward the Claimant. A one day suspension and letter of warning cannot be deemed excessive discipline under the facts of this case.

Finally, we find that the Organization has failed to establish any procedural violations by the Carrier. Rule 34, cited earlier, does not specify a specific time period upon which the Transcript must be delivered to the employee representative. Furthermore, even if we found Carrier in violation of Rule 34, we could not find that such violation prejudiced the Organization in any way.

AWARD:

Claim denied.

Nicholas Furnas
Neutral Member

J. A. Whitelb, Jr.
Carrier Member

Byron L. Hall
Organization Member

Date: 8/7/85