

PUBLIC LAW BOARD NUMBER 3530

Award Number: 38
Case Number: 38

PARTIES TO DISPUTE

NORFOLK AND WESTERN RAILWAY COMPANY

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM

Claim of R.J. Kresinske for reinstatement, for pay for time lost with vacation and seniority rights unimpaired.

FINDINGS

This dispute involves the conduct of the Claimant, a laborer, which resulted in his dismissal from service on October 7, 1983. The Organization requested a hearing, which was held on November 16, 1983 to investigate the Claimant's "furnishing Assistant Track Supervisor D.L. Kerby false information on October 6 and 7, 1983, ... being absent from work on October 5, 1983 ... and ... being excessively absent".

The evidence at the hearing revealed the following about the Claimant's October 5 absence and false statements. The Claimant testified that he injured his ankle on October 4. He spoke with Mr. Kerby on the afternoon of October 5 to tell him that he had injured his foot and was seeing a physician. Mr. Kerby requested the Claimant to bring a note from the doctor to work the following

day. The Claimant testified that he went to the doctor, but there were too many other people seeking treatment, so he left rather than waiting to be treated.

The following day, the Claimant told Mr. Kerby that he had seen the doctor, but did not have a note. Mr. Kerby testified that he telephoned the doctor who stated that the Claimant had not been treated the prior day. Mr. Kerby confronted the Claimant who admitted that he had not been treated by the doctor on October 5.

According to the records of the Carrier, the Claimant had been absent on the following days:

September 14 for 2.5 hours
September 15 for 8 hours
September 19 for 7 hours
September 21 for 5 hours
September 29 for 8 hours.

Mr. Salmons, the Terminal Track Supervisor, testified that he could not remember giving the Claimant permission to be absent on any of those dates. he also testified that the Claimant did not call in advance on any of the days where he was absent for the full eight hours. Mr. Kerby stated that he believed the Claimant had informed the foreman that he would be absent for some of these dates.

The Claimant testified that on the days in which he was absent for eight hours he had called in advance to inform the Carrier. He also stated that on other days he had permission from either a foreman or a supervisor to leave work early.

It should be noted that the Claimant's service record included the following entries:

- June 25, 1982 - a letter of warning placed in his file for being absent without permission.
- May 4, 1983 - a letter of warning placed in his file for being absent without permission.
- August 3, 1983 - letter of warning placed in his file for excessive absenteeism.
- August 12, 1983 - assessed a 20-day suspension for being absent without permission.

On December 5, 1983, the Carrier informed the Claimant that the decision to suspend him had been upheld. On January 5, 1984, the Organization filed a claim on his behalf. After a series of appeals, the claim was denied by Mr. Steele, Assistant Vice President - Labor Relations, on July 10, 1984.

The issue in this dispute is whether the dismissal of the Claimant was for just cause.

The position of the Organization is that the Claimant had permission to be absent on many of those days and should not be excused of excessive absenteeism if granted permission. The Organization also argues that the Claimant should not be punished for the incidents of October 5 and 6 because he offered a reasonable explanation: the doctor's office was too crowded.

The position of the Carrier is that the Claimant received a fair hearing, during which it was shown he was frequently absent and that he gave false information concerning his October 5 absence. The Carrier maintains that in light of his past record, the Claimant's dismissal was justified.

The evidence indicates that the Claimant frequently failed to report for work and, at times, did not work his entire shift. His service record includes several warnings and a suspension for absenteeism. In the latter half of September, he either never reported for duty or failed to work his entire shift on five different occasions. Then, by making false statements to Mr. Kerby about his October 5 absence, the Claimant cast further shadows of doubt upon his reliability.


In order to operate, a Company needs employees who are reliable and who may be counted upon to report for work each morning. A company is not obligated to retain an employee who is frequently absent and not dependable.

Although he often had legitimate reasons for being absent, the Claimant was not reliable. Despite warnings and a suspension, his problem continued, culminating in the giving of false statements about his October 5 absence.


The Claimant became an expensive liability to the Carrier, who found him too unreliable to count on being at work every day. It is the opinion of this Board that the Claimant's dismissal was for just cause.

AWARD

Claim denied.



Neutral Member



Carrier Member



Organization Member

DATE: 1/13/86