

PUBLIC LAW BOARD NUMBER 3530

Award Number: 39
Case Number: 39

PARTIES TO DISPUTE

NORFOLK AND WESTERN RAILWAY COMPANY

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM

Claim of J.P. Hadley for reinstatement, and for pay for all time lost with vacation and seniority rights unimpaired.

FINDINGS

This dispute involves the conduct of the Claimant, a machine operator, on the morning of July 7, 1983 at Crewe, Virginia. A hearing began on August 12, 1983, was recessed, and then concluded on August 24, 1983. The hearing was held to determine the Claimant's responsibility for trespassing in the Maintenance of Way and the Building and Bridge supply rooms.

At the August 12 hearing, Mr. Walker, a supervisor, testified that he was searching for a rule book that he had left in the building. He testified that at approximately 8:00 AM, when he unlocked and opened the door to the Building and Bridge Material room, he found the Claimant inside. According to Mr.

Walker, the Claimant said he had to use the toilet and was "agitated and shaking his hands". Mr. Walker added that the Claimant said he had been taking inventory in the Roadway Machine Storage area with Mr. Prescott, who had locked him in the room.

According to Mr. Walker, there are three storage areas/supply rooms that are in that area. At one end is the Roadway Machine Repair Storage area. In the middle lies the Maintenance of Way storage area, and at the other end is the Building and Bridges material room.

Testimony reveals that these three rooms are separated by walls that are over six feet high and have several feet of chicken wire on top of that. Both Mr. Walker and Mr. Porter, a Roadmaster, testified that at a section of each wall, the wire had been pushed down as if someone had climbed over the fence.

Mr. Porter and Mr. Walker testified that the doors on these storage areas had similar locks. The door, when locked, prohibits people from entering the room, but does not stop those inside from leaving. According to Mr. Walker, the Building and Bridges storage area has only one door.

Mr. Prescott, a Roadway Machine Repairman Helper, testified that sometime between 7:30 AM and 8:30 AM he was preparing to leave with another

worker for Ford, Virginia. He stated that he saw the Claimant drive up in a private truck. Mr. Prescott testified that when he left the area, the Claimant was still outside the building. Mr. Prescott denied working with the Claimant or locking him in a room.

The Claimant testified that on the morning he was trying to learn where he was assigned for work that day. He testified that he spoke with Mr. Porter at 7:45 AM and then bought a cup of coffee at a nearby convenience store. He stated that he then telephoned Mr. Thompson shortly after 8:00 AM, and was instructed to report to Huddleston, Virginia, which he did. The Claimant denied being in the building and denied being found in the Building and Bridges supply room.

The Claimant also stated that he was willing to take a polygraph test. The hearing was recessed until August 24, when the results of the test were entered as exhibits. The test revealed that "Mr. Hadley showed reactions indicative of deception when he answered 'No' to the following questions:

- #5 Did you illegally enter Mr. Walker's office area in question on July 7, 1983?
- #7 Did you talk with Mr. Walker in his office area in question on July 7, 1983?
- #9 Did you use the bathroom in Mr. Walker's office area in question on July 7, 1983?

#10 Did you illegally enter Mr. Walker's office area in question to commit a theft?

On September 7, 1983, the Carrier informed the Claimant that he had been dismissed due to his conduct on July 7. On October 3, 1983, a grievance was filed on his behalf. After a series of appeals, Mr. Steele, Assistant Vice President - Labor Relations, denied the claim on May 7, 1984.

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

The position of the Organization is that the Carrier failed to sustain its burden of proof of showing that the Claimant was guilty of any wrongdoing. The Organization also maintains that the discipline assessed was excessive.

The position of the Carrier is that the Claimant received a fair hearing during which the Claimant was shown to have trespassed. The Carrier argues that dismissal was justified for this offense.

On July 7, 1983, the Claimant was found in the Building and Bridges supply room which was locked, and not accessible through the only door. At that time, he admitted that he had been in another room in the building and that he was trying to get to a bathroom. This admission, coupled with the evidence of the

chicken wire being pushed down, indicates that the Claimant had entered the Roadway Machine storage area, climbed over the fences and was then discovered by Mr. Walker.

The fact that the Claimant was seen by Mr. Prescott outside the building that morning does not necessarily mean he was never in the building on July 7. Mr. Prescott stated that he saw the Claimant sometime between 7:30 and 8:30. He could have been in the building when discovered by Mr. Walker at 8:00 AM and outside during the remainder of that hour long period.

On July 7, the Claimant admitted he was in the building to Mr. Walker. At the August 12 hearing and later, he testified that he had not been in the building that morning. The polygraph test does not support his testimony at the hearing. While this Board recognizes that polygraph test results are not conclusive proof that the Claimant was lying, the results certainly do not support his testimony.

An employer needs employees who are honest and trustworthy. If an employee's behavior indicates that he is not honest and should not be trusted, the employee should not be retained. The Claimant displayed such behavior by trespassing on July 7. It is the opinion of this Board that the Claimant's dismissal was for just cause.

AWARD

Claim denied.

Nicholas Kumar
Neutral Member

J. A. Abhatta, Jr.
Carrier Member

Bryce L. Hill
Organization Member

DATE:

1/13/86