

PUBLIC LAW BOARD NUMBER 3530

Award No. 44
Case No. 44

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Laborers, W. D. Dotson, Rt. 2, Box 46-C, Pinsonfork, KY 41555, and E. H. Williamson, General Delivery, Stone KY 41567 were dismissed from service for allegedly failing to report on T-5 Tie Gang. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request they be reinstated with all back pay, and seniority and vacation rights unimpaired.

FINDINGS

Claimants, at the time of their dismissal, were employed as laborers on Carrier's T-5 Tie Gang. By letters dated May 27, 1983, Claimants were notified to attend an investigation concerning charges that they failed to report for their assigned duties. An investigation was held on July 6, 1983. By letters dated July 25, 1983 Claimants were dismissed.

The issue to be decided in this dispute is whether the Claimants were dismissed for just cause under the Agreement.

The position of the Organization is that the dismissals were improper for both procedural and substantive reasons.

The Organization's primary contention is that the Claimants were denied a fair opportunity to defend themselves due to the vague and inadequately explained nature of the charges brought by Carrier. The Organization contends that without clearly outlined charges, it is both unfair and impossible to expect an employee to be able to adequately defend himself at an investigation. The Organization cites awards holding that procedural rules designed to protect employees' rights must be followed by Carrier. The Organization further cites testimony which it alleges illustrates Claimants' confusion concerning the charges proffered. The Organization concludes that Carrier's actions constituted a violation of Rule 33 of the agreement which states, "An employee disciplined or dismissed will be advised of the cause of such action in writing." The Organization urges a strict construction of the above language, requiring Carrier to clearly and explicitly outline the charges against an employee in writing. Under that construction, it is the Organization's position that Carrier violated the rule, and that Claimants must be reinstated.

The position of the Carrier is that the Claimants were

justifiably dismissed for failing to cover their assignments and for failure to notify Carrier's officials of their absence. Carrier contends that the Claimants failed to report for work on May 11, 1983 or to notify Carrier of their absence; and further that they did so for six subsequent days. Carrier maintains that such behavior is intolerable for an employee and clearly merits dismissal. Carrier cites several awards holding that absenteeism without notification constitutes grounds for discipline. Carrier concludes that such action clearly violated Rule 26 of the Agreement, stating, "An employee desiring to be absent from service must obtain permission from his foreman or the proper officer."

Carrier further denies that it violated the Claimants' right to a fair investigation. Carrier alleges that the charges against the Claimants were clear and understood by them. Carrier cites the Claimants' testimony at the investigation that they were aware of the charges against them. Carrier maintains, therefore, that there is no basis to the Organization's allegation that the Claimants were unable to prepare a proper defense to the charges proffered.

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

It is not the purpose of this Board to review an

investigation held by Carrier, but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

We find that Carrier has acted within its discretion in the present case. Carrier has a right and a need to expect that its employees will report for duty as required or, alternatively, notify Carrier if absence is necessary. In the present case, the Claimants did neither, leaving Carrier without employees to perform needed duties or the opportunity to replace those employees, in advance, without disruption of the workplace. We agree with those awards cited by Carrier holding that such absenteeism without authorization constitutes grounds for discipline, including dismissal.

Finally, the Board finds that the Organization's allegation of procedural defect is without merit. The letter cited by the Organization states in pertinent part, "...account failure to report on T-5 Tie Gang." Carrier's letters of May 27, 1983 state in part, "...for your responsibility in connection with you vacating your assignment as Laborer at 7:00 p.m. May 10, 1983...without authority and your failure to protect your assignment thereafter." We find that Claimants

were aware of the charges against them. Their admission of such knowledge at the investigation reinforces such a conclusion. We therefore find that no violation of Rule 33 has been established by the Organization.

Accordingly, the claim must be denied.

AWARD

Claim denied.

Nicholas Kumar
Neutral Member

J. A. Alkhatib, Jr.
Carrier Member

Bryce L. Hall
Organization Member

Date: 1-21-87