

PUBLIC LAW BOARD NO. 1844

AWARD NO. 33

CASE NO. 38

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. B. T. Teppo effective at the close of work on October 15, 1976 was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) Mr. Teppo now be reinstated with all rights unimpaired and paid for all time lost.

OPINION OF BOARD:

Claimant was a regularly assigned trackman on a section crew headquartered at Superior, Wisconsin. His workday started at 7:30 A.M. On Wednesday, September 29, 1976, Claimant failed to show up for work. On Thursday, September 30, 1976, he appeared twenty minutes late and was sent home by his Foreman and told to report on time for work or not at all. The next day, Friday, October 1, 1976, Claimant failed to appear for work. Thereafter on October 5, 1976 he was served with a notice to attend investigation to determine "your responsibility for failing to report for duty at 7:30 A.M. on September 29, September 30 and October 1, 1976 at Itasca, Wisconsin." Following a formal hearing and a review of his personnel record, Claimant was advised of his dismissal effective October 15, 1976.

The basic facts of Claimant's absence and tardiness on the days in question are not disputed. At the hearing Claimant offered as an excuse for his absence on September 29 the fact that he had been drinking heavily the night before and was afraid to report for work under the influence of alcohol lest he be cited for a Rule G violation. This "excuse", even if communicated to Carrier, does not justify his absence from work. As we observed in our recent Award No. 32 (Case No. 37) sobriety and punctuality are not trade-offs but rather the employer properly may require both in an employee. As for September 30, 1976 Claimant testified that his customary ride to work was not available and he was forced to hitchhike which accounted for his lateness. This excuse might be deemed justification for tardiness if Claimant also demonstrated that he made every effort to get to work on time. In that connection his is the burden of showing, for example, that he arose early enough to make allowances for the extra time necessary to hitchhike. Not only is there no such showing but his excuse is weakened further by the fact that he did not appear at all on Friday, October 1, 1976, again allegedly because he was again tardy due to hitchhiking. Our review of the foregoing record facts persuade us that Claimant's absences were unexcused and unjustified on the three dates in question. On its face, dismissal for two days' absence and one day's tardiness appears to be harsh and excessive. But the record facts show that Carrier properly reviewed and considered Claimant's overall personnel record, including time and attendance data as well as prior discipline. The unexcused absence and tardiness of September-October 1976 were not isolated instances. The unrefuted record shows that over a two-year period Claimant was absent in excess of 40 percent of the workdays available to him. In January 1975 he received five days' deferred suspension because of being absent without

permission. Written reprimands for failure to report for work were served on Claimant on July 18, November 22 and November 25, 1975. Unlike other cases cited by the Organization, there are no mitigating circumstances for lack of progressive discipline shown on this record. In light of Claimant's recidivism and prior discipline for attendance-related violations we cannot deem the penalty so excessive as to be arbitrary, unreasonable or capricious. On the basis of all the foregoing we must deny the claim.

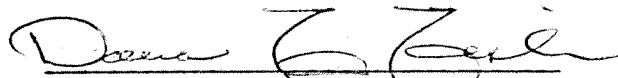
FINDINGS:

Public Law Board NO. 1844, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: 12/6/78