

PUBLIC LAW BOARD NO. 1844

AWARD NO. 70

CASE NO. 85

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

"(1) The thirty (30) day suspension of Foreman R.C. Carter, effective January 18, 1979, was without just or sufficient cause. (System File D-11-1-402)

"(2) Foreman Carter be compensated for all time lost and the matter of discipline be stricken from his record."

OPINION OF BOARD:

Claimant was employed as a Track Foreman at Belvidere, Illinois, working under Track Supervisor B. V. Spicer. Following an incident on January 18, 1979, Claimant was served Notice of Investigation on the following charge: "Your responsibility in being quarrelsome and insubordinate on Thursday, January 18, 1979." On the basis of evidence developed at that hearing Claimant was suspended for thirty days without pay.

Claimant reported for work on the day in question, although he testified he was feeling ill. The record shows that the relationship between Claimant and Track Supervisor Spicer had for some time been unpleasant. On the morning of January 18, 1979 Claimant telephoned RoadMaster Hanna to complain about Spicer's "lack of cooperation" in cleaning snow from switches. Spicer then

came on the line and made the same complaint about Claimant. The Roadmaster testified that he verbally dressed down both men, told them he was tired of their bickering, and ordered them to cooperate with one another. Spicer apologized and stated that he would do his best. Claimant continued to berate Spicer and told the Roadmaster that cooperation was impossible. At that point in the conversation Claimant told the Roadmaster that he was going home. Claimant testified that he advised that he was too sick to continue working. The Roadmaster states that Claimant made no mention of illness. Roadmaster Hanna told Claimant that he was under orders to clean snow from the switches and that if he refused that order and went home he would be subject to discipline. Claimant responded in words or substance: "That's fine with me", whereupon he did leave work and go home. The record contains a certification from Claimant's doctor that, upon examination of January 19, 1979, he was found to have pneumonia.

We accept the unrefuted medical evidence that Claimant was not feeling well on January 18, 1979. However, Carrier resolved the credibility conflict between Claimant and the Roadmaster, regarding whether Claimant mentioned his illness, by accepting the Roadmaster's version of the conversation. We have no basis to find that conclusion arbitrary or unreasonable in the facts of record. Even if arguendo Claimant's illness affected his behavior, his responses to the Roadmaster were intemperate and cannot be condoned. The penalty imposed is not excessive in the circumstances.

FINDINGS:

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

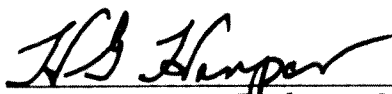
1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;

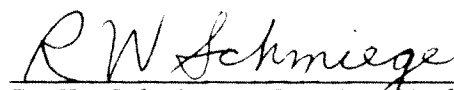
2. that the Board has jurisdiction over the dispute involved herein;
and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Date: March 25, 1980