

PUBLIC LAW BOARD NO. 1760

Award No. 129

Case No. 129

Docket No. MW-FTW-89-49

Parties     Brotherhood of Maintenance of Way Employees  
to             and  
Dispute     Norfolk and Western Railway Company  
              (Former Wabash)

Statement

of Claim: Claim of J. L. Dixon appealing his thirty day suspension assessed as the result of a January 19, 1990 investigation, concerning failure to protect job assignment on November 17, 1989.

Findings: The Board has jurisdiction of the of this case by reason of the parties Agreement establishing this Board therefor.

The Claimant, Laborer J. L. Dixon, on Friday was a member of 7-W Gang which was one of three gangs (13 men) assigned to lay rail on Wabash #2 track at Ft. Wayne, Indiana. Early that morning Track Supervisor R. Fluty advised Foreman Fanning that there would be mandatory overtime for all employees that day. Fanning was told that all employees were to stay on the job until the track was back in service or until they were released.

Foreman Fanning, at approximately 10:30 AM, instructed the Claimant to stay on the job until the work was completed and he was released on November 17. The Claimant told the Foreman that he could not work overtime because he had unspecified personal business to attend to. The Foreman instructed the Claimant to talk to Track Supervisor Fluty if he wanted to be off. The Claimant never spoke to Mr. Fluty and left his assignment at the regular quitting time on November 17, 1989.

The Claimant was cited to an investigation on the charge of failure to protect his assignment and with failure to comply with direct instructions issued by his Foreman on November 17, 1989.

The Carrier concluded from the transcript that Claimant was culpable of the charge placed against him. He was suspended from service for 30 days as discipline therefor.

This is a unique case. It is clear after commencing work on November 17, 1989 that the Claimant was notified by his Foreman that the gang would be required to work

overtime. The Claimant, at that time, notified his Foreman that he could not work any overtime that day on account of personal business. This is the unique aspect. The Gang Foreman instructed the Claimant to talk to the Roadmaster if he desired to get off early (without working overtime) to which the Claimant advised him that he had informed his immediate supervisor and therefore, it was up to the Foreman, if necessary, to talk to the Roadmaster. The Claimant walked off the job at the end of the 8 hour shift. While the remainder of his gang worked about two hours of the required overtime because Track Supervisor Fluty closed the operation down. Agreement Rule 24 reads:

"An employee desiring to be absent from service must obtain permission from his Foreman or the proper officer. An employee detained from work on account of sickness or for other unavoidable cause shall notify his Foreman or the proper officer as early as possible."

The testimony of at least Foreman Abrams and Track Supervisor Fluty was that any man needing to get off for personal reasons was permitted to be off. Also, they admitted that the past practice had been that the employee need only tell his Foreman when they were in need of being absent and he would grant permission to be off. It was alleged that subsequent to this incident Track Supervisor Fluty reversed his previous instructions.

While there was a conflict in the testimony as to whether Foreman Fanning in fact had told the crew they were to work overtime, he saying that he did and they saying that he did not and had learned of the required overtime from "rumors." The Carrier believed Fanning and we see no real reason to disagree therewith.

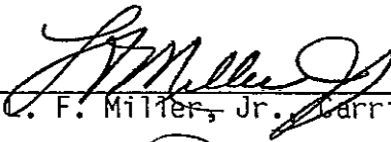
The Claimant, who one time had been in his 24 years of service a Laborer, a Foreman, an Assistant Roadmaster and a Roadmaster, testified that in the past when he had to be off for any reason he would and did always deal with his immediate supervisor because once he had gone to a higher level and he was instructed to go back and see his immediate supervisor. The Board finds that Foreman Fanning in carrying out Fluty's instructions did tell the Claimant to work overtime. He did, in effect, tell the Claimant that if he wanted to be off and not work the overtime the Claimant had to talk to Mr. Fluty in order to receive that permission. Consequently, that must be construed as, in effect, telling the Claimant he could not be off with his permission and it was otherwise necessary to get permission from Fluty. However, the Board finds that those circumstances of the Claimant's excellent background serve

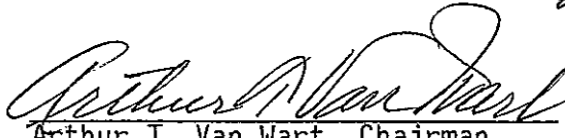
to mitigate the degree of the discipline. Consequently, because this is not the usual case of insubordination, but rather arises more as the result of an admitted work practice and the difference in the Foreman's and the Claimant's understanding of how to properly communicate within the chain of command will serve to mitigate the discipline. Claimant was wrong and therefore he is being disciplined for it. However, the 30 days assessed is reduced to 15 days.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

  
S. Hammons, Jr. Employee Member

  
C. F. Miller, Jr. Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued December 31, 1991.