

PUBLIC LAW BOARD NO. 1760

Award No. 143

Case No. 143

File No. MW-DECR-92-28

Parties     Brotherhood of Maintenance of Way Employes  
to           and  
Dispute     Norfolk and Western Railway Company  
              (former Wabash)

Statement  
of Claim: B. P. Preslar - Dismissal - Conduct unbecoming an employee.

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

The Claimant was cited to a formal investigation under date of April 15, 1993 on the charge:

"...with conduct unbecoming an employee in the events surrounding the incident of April 12, 1992, 9:15 P.M., at Ferguson Ave. (adjacent to N&W property), Ferguson, Missouri, in that you urinated on company vehicle #390635 and attempting to urinate into the fuel tank of that vehicle."

Carrier concluded from the investigation held that the Claimant was culpable. He was dismissed from service as discipline therefor.

The Claimant, was arrested by the Ferguson, MO police officers in connection with the incident.

The Claimant was accorded the due process to which entitled under Rule 30. While the Organization has rightfully and properly pointed out that the Carrier was not in compliance with Rule 30 in that they sent the copy of the Carrier's decision to the office of another General Chairman they failed to show how that administrative error had in any way prejudiced the rights of the employee. Third Division Award 20423 (Lieberman) in denying a similar issue said:

"The sole issue before us is whether the proper remedy for Carrier's dereliction is to set aside the discipline imposed on Claimant as contended by Petitioner. The claim stipulates that Claimant was improperly dismissed only because of Carrier's failure to furnish the information to Claimant's representative in a timely fashion.

Petitioner argues that time limit rules are placed in the Agreement for a purpose and must be adhered to by both parties. Carrier argues that Claimant's rights were in no way prejudiced by the tardiness in sending copies to his representatives and the language of Section 5 -~~3a~~ of Article V precludes allowance of the Claim unless the charges are not sustained....

... The Board's function, in reviewing the disciplinary activity on the property is of course restricted. In this case such review is limited to determining whether or not the Carrier's failure to furnish timely information in any fashion impaired Claimant's rights to a fair hearing and subsequent handling of the discipline. We find no evidence presented by Petitioner to indicate the impact of the Carrier's error and we can find no effect on any rights accruing to Claimant. It is clear that the purpose of Section 3 of Article V was to enable Claimant to perfect his appeal in normal fashion and in this case he was not hampered...

In Award 1774, in a very similar factual situation, we held that Claimant was not prejudiced by Carrier's inadvertent failure to send a copy of the disciplinary decision to the General Chairman. We said:

'We hold to the general view that procedural requirements of the agreement are to be complied with but we are unable to agree that Carrier's failure in this regard, under these circumstances, was a fatal error which justifies setting aside the discipline ultimately imposed. Undenied guilt is significant in our consideration.

...It would be impossible to hold that the charges against Claimant have not been sustained and there is no contractual remedy provided for violation of Section 3 unless there was some negative effect on Claimant's right to due process. The claim must be denied.'

Rule 30 (f) provides:

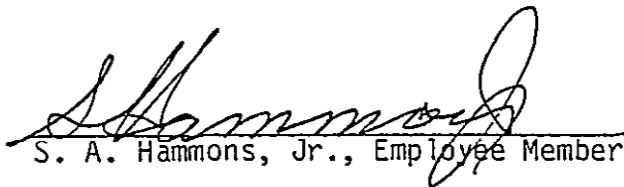
"If the charge against the employee is not sustained, it shall be stricken from the record and employee reinstated and paid for the assigned working hours actually lost, less the amount earned from time of suspension until reinstated."

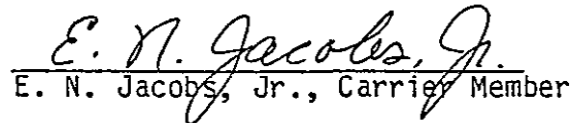
That rule does not support the position of the Employees as to receipt of untimely information or decisions. Here, the charge was sustained.

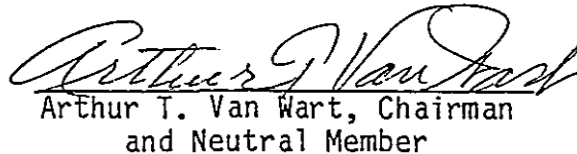
The Claimant committed and admitted to the commission of a most serious offense. His offense was contumacious conduct and constituted an act of disloyalty and utter disdain for his employer as well as of his supervisors. Such conduct was clearly unbecoming that of an employee and it presents an image that requires the dismissal of an unworthy employee.

It is noteworthy that three obscene and threatening letters have been directed at Carrier officials since the decision was rendered. Such letters represent nothing but a continuation of a contemptuous attitude. The Claimant presents a threat and a danger to the Carrier's operations and to the employees. The decision of dismissal is held to be reasonable. This claim will be denied.

Award: Claim denied.

  
S. A. Hammons, Jr., Employee Member

  
E. N. Jacobs, Jr., Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member