

PUBLIC LAW BOARD NO. 1760

Award No. 21

Docket MW-DEC-75-88

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim 1. Carrier violated the effective agreement by dismissing M. L. Johnson and J. C. Flanery on December 1, 1975 on unjust and unproven charges. (Later changed to 45 days actual suspension.)
2. Claimants M. L. Johnson and J. C. Flanery shall be paid for all time held out of service and the hearing be stricken from their records.

Findings The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated February 2, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimants, on December 1, 1975 were employed as Assistant Foreman and Laborer respectively, in Carrier's Maintenance of Way Department on the Decatur Division. The Roadmaster, who arrived at the depot in Decatur about 1:50 PM on December 1, 1975, were unable to find Claimants and began to search for them. At about 3:55 the Roadmaster came back to the depot and found the Claimants standing on a tamper

behind the depot. They advised the Roadmaster they had been working at the Plastic Plant. Since the Roadmaster had been there on two separate occasions and had not located Claimants he thereupon dismissed them from service for not following his instructions and not performing work as directed.

A hearing was requested under Rule 20 of the effective Agreement. A formal investigation was held on January 5, 1975:

"to determine your responsibility in connection with being dismissed from service on December 1, 1975 at approximately 3:55 PM by J. A. McBride, Track Supervisor, without first being given a fair and impartial hearing."

As a result of such hearing Carrier concluded Claimants had not followed instructions. Nonetheless, Carrier mitigated their discipline from a dismissal to a forty-five (45) day actual suspension.

Rule 20 of the Schedule Agreement between the parties, effective December 1, 1963, reads:

"DISCIPLINE AND GRIEVANCE

(a) An Employee who is disciplined or dismissed without first being given a fair and impartial hearing will, on written request (made either in person or through a duly authorized representative of the Brotherhood of Maintenance of Way Employees) to the immediate Supervisor, made within ten (10) calendar days of advice of discipline or dismissal, be given a fair and impartial hearing within ten (10) calendar days after receipt by the Supervisor of such request.

'At the request of either party the hearing will be postponed. The hearing will not be postponed in excess of ten (10) calendar days beyond the date first set for it to be held except by Agreement between the Company and the General Chairman...."

The General Chairman requested a hearing under Rule 20 under date of December 5, 1975. He advised that he would be available December 9 and 10, in Decatur, for formal investigation. However, the Division Engineer - Maintenance under date of December 9, 1975 set a formal investigation for January 5, 1976.

At the outset of the hearing the General Chairman protested the fact that the hearing wasn't being held as provided in Rule 20 within the required time limits. The protest was completely ignored. A procedural violation such as this makes the investigation null and void ab initio. There is no cause to review the case on its merits. Therefore, this claim will be sustained on the basis of the procedural error.

Award Claim sustained as per findings.
Order Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

M. A. Christie
M. A. Christie, Employee Member

E. N. Jacobs
E. N. Jacobs, Carrier Member

Arthur T. Van Wart
Arthur T. Van Wart, Chairman
and Neutral Member