

PUBLIC LAW BOARD NO. 1760

Award No. 32

Case No. 32

Docket No. MW-DEC-80-47

Parties Brotherhood of Maintenance of Way Employees  
to and

Dispute Norfolk and Western Railway Company (Former Wabash Railroad)

Statement

of Claim: Claim on behalf of Ms. S. Beasley account dismissal  
from service as a result of investigation held on  
August 26, 1980.

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.

Claimant, a welder-helper, on the Decatur Division, was dismissed from service for excessive absenteeism from her assigned position. During the period of April 7, 1980 through June 30, 1980, Claimant was absent on April 22, 24, 29, May 16, 20, 21, 22, 23, 28, 29, June 10, 16, 24, 26, and 27, 1980. Thus, out of sixty (60) possible work days, she was absent on fifteen (15) days thereof which represented an absentee rate of 25%.

Although Claimant, for the most part, did give notification in advance of her absence, nevertheless, the impact thereof was the same whether such absence was valid or otherwise. As noted in Second Division Award No. 5049 (Johnson):

"Nothing in the agreement obligates the Carrier to attempt to operate its railroad with employees repeatedly unable or unwilling to work the regular and ordinarily accepted shifts, whatever reason or excuse exists for each absence, and even without the complication of work for other

employees. His practice, if permissible for him, is permissible for all employees."

The Board concludes that there was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability.

However, there are mitigating circumstances to permit a modification of the discipline assessed. The Board concludes that there was no valid reason shown that the Union should not have the right to use a tape recorder at the hearing providing of course that it clearly understands that notwithstanding such use that the official record is that which is made by Carrier from its recording device. Claimant will be conditionally reinstated to service with all rights unimpaired but without pay and subject to the following: She shall meet with both the local representative of the union and that of Carrier for the purpose of reviewing her record and to properly understand her obligation to report any absence and the need to work with regularity. Thereafter, Claimant shall be placed in a probationary status for a period of six (6) months. Such status, does not, deny her any contractual rights such as the protection of the discipline rule.

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.



M. A. Christie, Employee Member



E. N. Jacobs, Jr., Carrier Member



Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Wilmington, Delaware, February 24, 1982.