

PUBLIC LAW BOARD NO. 1760

Award No. 53

Case No. 53

Docket No. MW-DEC-80-60

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company (Former Wabash)

Statement

of Claim: 1. Carrier violated the effective agreement when section foreman James O. Comage was unjustly dismissed.

2. Claimant Comage can now be returned to service with the respective rate of foreman and any additional overtime work after the date he was removed from service on March 25, 1983 until a decision is rendered and agreed upon by the respective parties involved.

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 Section Foreman in Carrier's Decatur yard, with 11 years service was notified under date of March 25, 1983 to attend a formal investigation on April 5, 1983 on the charge:

"To determine your responsibility in connection with your being insubordinate to an Assistant to the Regional Engineer, J. Herzog and Division Engineer-Maintenance F. R. Cashner, and being in violation of Rule 1001(c) at the Norfolk and Western Ry. Co. Safety Rules and Rules of General Conduct, effective March 1, 1981 at Brush (east end of Decatur yard) approximately 11:43 AM on March 25, 1983 in that you refused to comply with verbal request by the above Supervisors, during which you were instructed to provide information in connection with an employee under your jurisdiction...."

As a result of the investigation held, Carrier found Claimant guilty as charged. He was dismissed from service as discipline therefor.

Safety Rule 1001(c) reads:

"1001(c). An employee who is a witness to or has knowledge of any accident in which the Company is involved, shall, upon request, furnish the casualty claim department with a signed, written statement, or a recorded statement on the facts and shall not give any information or make any statement to any person other than the officers of the company concerning such action unless ordered or directed to do so by a court or governmental investigating commission or law enforcement agencies... This rule shall not prohibit any employee, if he or she so desires, from giving such information as he or she has concerning injury or death of an employee of the company to the injured employee or his or her lawful representative or to the lawful representative of the deceased employee.

Any statement concerning an accident made by an employee to those entitled to it under the foregoing rule shall be complete and accurate and relate only such facts as are personally known to the employee."

Claimant was accorded the due process to which entitled under Rule 20. The charge was precise to have placed Claimant on notice as to what to defend against. Claimant was very capably represented, faced his accusers, exercised his right of appeal.

There was sufficient evidence adduced to support Carrier's conclusion as to Claimant's culpability. Claimant was asked by two supervisors to get into a car and to give a statement. He walked away therefrom. He refused both by statement and act. His discipline record reflects three previous incidents of insubordination. It may well be true that Claimant had cause to be suspicious. However, the record is devoid of his filing any grievance to have such alleged basis therefor reviewed.

While there was sufficient evidence adduced to support Carrier's conclusion that Claimant was guilty of insubordination, the record also reflected that Claimant believed that he had been abused by a supervisor in a previous similar situation. Consequently, in the instant situation, by the supervisor asking him to give a statement concerning an employee injury which Claimant already knew that he knew nothing about and had previously so stated to the supervisors, the Board finds those facts will serve as a mitigating circumstance. The discipline will be modified to permit Claimant to return to service as a Laborer to exercise his rights as a such but without pay for time out of service.

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
M. A. Christie, Employee Member

S. C. Lyons Carrier
S. C. Lyons, Carrier Member Dissents
to
Reinstatement

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

Issued December 14, 1984.