

PUBLIC LAW BOARD NO. 1760

Award No. 65

Case No. 65

Carrier File MW-DET-83-5

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 S. T. Evans' position as Laborer on the Detroit Terminal Division was terminated.

2. Claimant Evans shall be paid for an equal number of hours at his respective gang at the rate of laborer commencing on April 13, 1984 and continuing until Mr. Evans is returned to his former position with all seniority rights unimpaired.

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 Laborer, on the Detroit Terminal Division, was notified by telephone on April 2, 1984 that he was being recalled to service from furlough pursuant to Rule 9. He requested the Caller to send him a letter to confirm the recall.

A letter, dated April 2, 1984, over the signature of the Division Engineer-Construction and Maintenance, sent a certified return receipt requested, advising therein that Claimant return to service within 10 days pursuant to Rule 9.

The Post Office Department returned said certified letter indicating that they had attempted to make delivery on April 3, 1984 but such was unsuccessful.

The Division Engineer, under date of April 12, 1984, wrote Claimant the following letter also sent certified mail, return receipt requested:

"This is to advise that you have forfeited all seniority rights with Norfolk and Western Railway Company for your failure to return to service within seven (7) calendar days after being notified by certified mail, No. 738851, letter dated April 2, 1984, which was sent to your last known address. The above is in accordance with that part of Rule 9 which provides: 'Employees failing *** to return to service within seven (7) calendar days after being notified by mail or telegram sent to the last known address will forfeit all seniority rights.'"

The General Chairman, on May 8, 1984, requested an investigation. The request was denied by Carrier on the basis that Claimant had not been dismissed as a matter of discipline, that the request was untimely and that it was without merit under the present Agreement signed March 29, 1984.

The Board finds that Carrier's position is supported by the facts. The separation was not discipline. Rather it was the administrative result of a self executing Rule (9).

Claimant had been notified orally on April 2, 1984. That fact was confirmed by two memorandums from a Steno-Clerk-Engineering, L. Loacano, and from Joseph Cippironi, Foreman/Timekeeper, both of whom had talked on April 2nd with Claimant when he was seeking to take his vacation on the 23rd to the 27th of April.

When Claimant was being called back he insisted on a letter in both instances be sent to him. The letter was sent. However, Claimant for reasons best known to him chose to not pick it up, although he had been so notified by the postal authorities. Consequently, under Rule 9, a self executing rule, Claimant failing to return to service within 7 days of notification forfeited all seniority rights. Such forfeiture does not constitute discipline. Therefore, Claimant was not entitled to the coverage of the discipline rule.

The Board can find no fault with Carrier's decision to not grant an investigation. Here, the Carrier had been in a similar situation

had held an investigation and dismissed the employee. However, the arbitrator of Board PLB 2908 in Award 24 held that the Carrier was right that the rule was self-executing but because Carrier had held an investigation it thereby permitted him to adjudicate the merits and he restored the Claimant to service without pay.

While there is no merit to the instant case, the Board is without authority to pass judgement thereof and dismisses same.

Award: Claim dismissed as per findings.



M. A. Christie, Employee Member



J. A. Abbateello, Jr. Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued December 8, 1985.