

PUBLIC LAW BOARD 1837

Case #11

AWD, 11

(MW-FTW-75-17)

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees
vs.
Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement dated February 1, 1951 on September 2, 1975, by unfairly and unjustly dismissing Claimant E. C. Young III from service.

2. Claimant E. C. Young III shall be reinstated to Carrier's service. In addition, he shall be compensated for all wages lost and have seniority and other rights returned unimpaired.

FINDINGS: This Board upon the whole record and all the evidence finds that:

The carrier and employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as amended.

This Board had jurisdiction over the dispute involved herein.

OPINION:

On July 2, 1975, the Claimant, a Section Laborer, reported to work as usual. The events that followed are substantially in dispute: the Claimant's foreman contends that he assigned the Claimant to a task -- pulling spikes -- to which the Claimant demurred. Thereafter, according to the foreman, he assigned him to work with another employee "straightening ties" -- a job which the Claimant failed to do correctly and then became argumentative

and hostile upon reproach by the foreman for his unsatisfactory work performance. Eventually, the Claimant refused to take instruction, and the foreman thereupon determined he should be removed from service, contacted his superior and requested him to take such action -- given the Claimant's purported hostile manner -- and asked for a member of the security forces to escort him off the premises. According to the Claimant, he was first told to pull spikes, which he did, and then advised to work with the other employee straightening ties. He contends he did both sufficiently to meet his foreman's orders, although the Claimant admits that he was in disagreement with certain aspects of the foreman's directives relative to the tie straightening function, and apparently did not perform such work entirely as ordered. The Claimant also indicates that he became obstinate at a certain point due to his dissatisfaction with the foreman's method of giving work orders. He denies, however, that he had refused to perform the work as assigned.

The record of this case give sufficient credence to the Carrier's version of the event to cause this Board to conclude that the Claimant was, as a minimum, uncooperative and not responsive to his foreman's work direction. There is a showing, by corroborative testimony, that the Claimant's basis for refusing or resisting work -- at least in part -- was his assessment of his seniority vis a vis other members of the gang. His own testi-

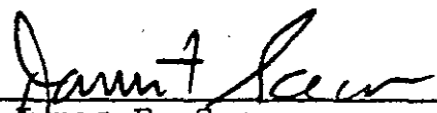
mony gives support to the Carrier's contention that he was inclined to dispute the correctness of work directives. In sum, we conclude that the Claimant failed to respond to work directives given by an authorized member of management and in a manner that sufficiently warranted them to be carried out. If the Claimant somehow felt he was being discriminated against due to his seniority, he could have made such objections known in the proper manner -- by obeying and grieving. He did not.

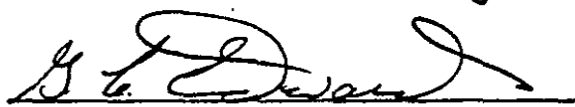
The Organization contends that the Carrier erred in the manner by which it removed the Claimant without advising him of an investigation to which he is entitled. We find nothing to substantiate this contention and conclude that the Claimant was properly taken out of service pending an investigation.

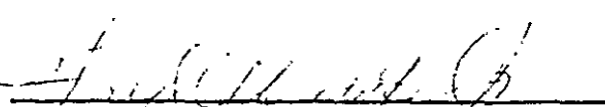
Finally, the Organization asserts that, even if the Claimant may not have been fully cooperative as he should have been, removal is too severe and is not corrective in nature. Insubordination is a serious offense and, left uncorrected, can seriously undermine morale and discipline. The record reflects no contrition on the part of the Claimant nor any recognition on his part of any wrongdoing. We shall not disturb the Carrier's decision in this matter.

AWARD:

Claim is denied.


James F. Scearce
Neutral Member


G. C. Edwards
Carrier Member


Fred Wurpel, Jr.
Organization Member

Dated this 1st day of February, 1980 at Cleveland OH