

PUBLIC LAW BOARD 1837

Case #12

(MW-CGO-75-8)

AWD-12

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement dated February 1, 1951, on October 10, 1975, by unjustly and arbitrarily dismissing from service, Claimant Lyntee Curley account alleged falsification of payroll form AD-452.

2. Claimant Lyntee Curley shall be reinstated to Carrier service, shall be compensated for all lost wages, and shall have all 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:

Claimant was classified as a heavy equipment operator with about two years service at the time of the events germane to this case. He is charged with falsifying his time slips for six days during the pay periods involving the last half of July and first half of August, 1975: (1) on July 29, 1975, he was absent

in the morning and was said to have claimed he had to be in court; nonetheless, he claimed pay for the entire day; (2) on July 31, 1975, he left his assigned work area at noon, purportedly to work on the piece of heavy equipment assigned to him, such equipment having been disabled a week or so prior; the equipment repairman testified, on the record, that he neither worked on this piece of equipment on that date nor was he scheduled to do so; (3) the Claimant turned in eight hours on his time slip for August 1, 1975, but performed no work nor was on duty; (4) on August 11, 1975, the Claimant purportedly left work for a dental appointment, was not seen thereafter, but still claimed eight hours pay for the day; (5) on August 12, 1975, a call was received at the Carrier's office from a woman indicating that the Claimant would not be in due to a "sick child;" he turned in eight hours time as worked; (6) on August 14, 1975, the Claimant was assigned to chop and clear brush along a specific part of the right-of-way, according to the Carrier, but efforts by his supervisor and another Carrier official was unsuccessful in finding him at any spot along the Section. The Claimant disputes some, but not all, of the Carrier's assertions of being absent from work. He contends that his absences for full and partial days were taken intentionally with a special "understanding" between he and his supervisor where such time off would be taken in lieu of pay at the overtime rate for travel to and from his duty station. The Carrier categorically


denies any such "understanding" and refutes the various other bases raised by the Claimant to explain his absences. The Organization asserts on the record that "understandings" for days off in lieu of pay such as claimed herein exists elsewhere and with other employees; however, we find no showing of proof to affirm such a contention.

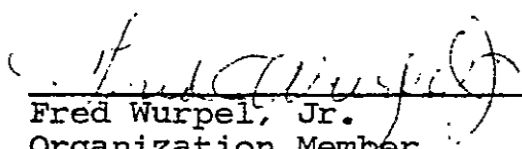
In reviewing the record, it would appear that the Claimant was, as a minimum, cavalier in his approach to give service for pay received. While the Claimant may have been unaware that he was doing anything wrong, we cannot overlook the seriousness of the offense. We are not unaware that the Claimant was made an offer by the Carrier that would have resulted in his remaining in an employment status; he chose to refuse.

AWARD:

Claim is denied.


James R. Searce
Neutral Member


G. C. Edwards
Carrier Member


Fred Wurpel, Jr.
Organization Member

Dated this 1 day of February, 1980 at Cleveland, Ohio