

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK & WESTERN RAILWAY COMPANY

Case No. 128

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood
that:

1. The dismissal of Hoisting Engineer H. E. Lloyd for allegedly making derogatory, vulgar, and threatening remarks to supervisors on April 23, 1999, and being absent without permission on that date was without just and sufficient cause, arbitrary, and an abuse of Carrier's discretion (Carrier's File MW-FTW-99-16-LM-94).
2. Hoisting Engineer H. E. Lloyd shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Claimant H. E. Lloyd was employed by the Carrier as a hoisting engineer at the time of this claim.

On April 27, 1999, the Carrier notified the Claimant to appear for a formal investigation to determine his responsibility, if any, in connection with his display of conduct unbecoming an employee in that he made derogatory, vulgar, and threatening remarks during telephone conversations with Norfolk Southern employees on the afternoon of April 23, 1999, and being absent from work without permission on April 23, 1999.

The hearing took place on May 5, 1999. On May 17, 1999, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed discipline of dismissal from the service of the Carrier.

The Organization filed a claim on behalf of the Claimant, arguing that the Carrier's actions in dismissing the Claimant were unjust, arbitrary, and an abuse of the Carrier's discretion. The Organization claims that the letter of charge was vague, non-specific in nature, and did not contain sufficient information for the Claimant or the Organization to properly prepare a defense. In addition, the Organization argues that the Carrier failed to provide documentation that the Organization had requested to clarify the allegation against the Claimant. The Organization contends that the discipline assessed was excessive, as well as unwarranted. The Organization argues that the Claimant was not responsible for his actions on the date of the alleged incident based on the testimony offered and the exhibits presented at the investigation. Specifically, the incident of what was perceived as threatening remarks happened when the Claimant was not in control of his faculties as a result of having taken pain medication for his headaches and mixing it with alcohol, causing an induced delusion. The Organization also maintains that the Carrier unjustly denied a postponement of the investigation, during which time the Claimant was medicated, suffered from cluster headaches and recurrent major depression, and was impaired in his ability to defend himself. Therefore, the Organization claims that the Carrier denied the Claimant a fair and impartial investigation. In addition, the Organization argues that the hearing officer called a pre-investigation meeting to discuss

the case and prejudged the Claimant. The Organization further argues that the Claimant was cooperative following the alleged incident, expressed remorse for his actions, and made an attempt to apologize for his actions. The Organization believes that the Claimant, who provided over thirty years of service for the Carrier, should have been offered help by the Carrier instead of a dismissal. In regards to the Claimant's alleged absence from work without permission on April 23, 1999, the Organization maintains that the Claimant notified his immediate supervisor of his intention to utilize a personal day on April 23 and that the Carrier could not produce any documentation to warrant the assessment of any discipline regarding the allegations of absenteeism against the Claimant. In addition, the Organization contends that it is not customary to charge an employee with over thirty years of service and no previous documentation.

The Carrier denied the claim. The Carrier maintains that the Claimant was properly notified and afforded a fair and impartial investigation. The Carrier argues that the information contained in the notice fully complied with the agreement requirements. In addition, the Carrier maintains that there is no provision in the parties' agreement requiring the Carrier to supply documents and/or evidentiary material to the Organization prior to a formal investigation. The Carrier also claims that the hearing officer conducted himself in a responsible, fair, and impartial manner. The Carrier argues that on the date in question, the Claimant called several Carrier officials due to his displeasure with certain manpower moves that the Carrier had made in the interest of efficiency of operation. The Carrier contends that the Claimant spoke in a vulgar and derogatory

manner, as well as threatened physical harm to both Carrier supervision and Carrier property. In addition, the Carrier contends that the Claimant was absent without permission on April 23, 1999. The Carrier contends that the Claimant was scheduled to work on April 23 but took it upon himself, without properly notifying supervision, to take off for a personal day. The Carrier asserts that the discipline of dismissal was appropriate in light of the seriousness of the offense and when taking into consideration the Claimant's less than exemplary service record. The Carrier argues that the Claimant admitted his wrongdoing at the investigation and must be held responsible for his disrespectful, unruly, and insubordinate actions. The Carrier claims that the Claimant clearly understood that his actions went beyond what is expected of an employee. The Carrier contends that the Claimant's actions in this case constituted a serious breach of the Carrier's rules and the Carrier's actions in dismissing the Claimant were entirely proper.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating Carrier rules and conduct unbecoming an employee by making derogatory and vulgar remarks to supervisors on April 23, 1999, and for being absent

without permission on that same date. Consequently, the Claimant subjected himself to discipline.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

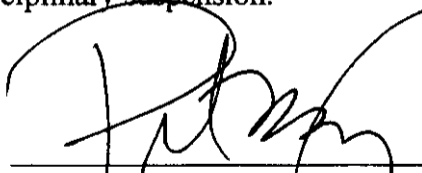
Although the action taken by this Claimant constituted the type of behavior that often leads to dismissal, this Board finds that because of the Claimant's over thirty years of employment with the Carrier and his excellent previous disciplinary background, the Carrier acted unreasonably, arbitrarily, and capriciously by terminating his employment. This Board reinstates the Claimant, but without back pay. However, before the Claimant can return to work, this Board orders that he must pass a physical examination, which includes a psychological examination. Since the Claimant "snapped," as has been stated by the parties, it would not be appropriate to reinstate him without his first passing a physical examination. Moreover, this Board orders that the Claimant must participate in the Employee Assistance Program (EAP) for the next five years to learn how to better manage his anger. The period that the Claimant was off shall be considered a lengthy disciplinary suspension.

AWARD:

The claim is sustained in part and denied in part. The Claimant is returned to service, but without back pay. However, prior to returning to work, the Claimant must

pass a physical examination which would include a psychological examination.

Moreover, once the Claimant returns to work, he shall participate for five years in the EAP to work on his anger problems. The time that the Claimant was off shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 5/18/01



ORGANIZATION MEMBER

DATED: 5-23-01