

(MW-MUN-77-46)

(MW-MUN-77-47)

(MW-MUN-77-48)

(MW-MUN-77-49)

Case No. 1

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, when unfairly and without just cause it dismissed claimants, Extra Gang Laborer T. L. Jordan, A. D. Stratton, W. L. Waughfield and Utah Dockery, Jr.
2. The claimants be restored to service with seniority and all rights unimpaired and payment allowed for the assigned working hours actually lost, less any earnings in the service of the Company.

FINDINGS:

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

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

This Board has jurisdiction over the dispute involved herein.

OPINION:

The Claims herein were combined by the Organization for handling before this Board. While the Carrier uniformly objected to the combining of such claims during handling on the property, such procedural objection was waived by the Carrier Member at the

time of this Board's convening.

The record shows that the Claimants in this case -- T. L. Jordan (-46), A. D. Stratton (-47), W. L. Waughfield (-48), and U. Dockery, Jr. (-49) were short service employees with as little as two months to no more than eleven months with the Carrier at the time of their removal. They were each assigned as Extra Gang Laborers to the "R-2 Rail Force." The work of this crew was such that camp cars were assigned and thus the Claimants could have had bed and board at the site of the work to be performed; they chose, instead, to drive to and from their private residences. In so doing, they either did not report at all or reported for work beyond their assigned starting time and were sent home -- for which they were marked absent for from 11 to 16 days in a period from March 14, 1977 (when they were each recalled to work from furloughs) to April 27, 1977 -- about one month. The record indicates that certain such absences were ascribed to health problems, for which no acceptable medical excuse was tendered, or automobile problems.

We find no basis to take exception to the Carrier's decision to hold the Claimants responsible for their non-availability for work in a timely manner or not at all. These are, after all, new employees who chose not to accept the option of camp car living; in so doing, they assumed the unilateral responsibility to be at work on time and regularly. The record

demonstrates they did neither, failed to furnish proof of the bases for their absence and, additionally, did not see fit to give some notice of their inability to report. Considering the number of absences or tardies involved and the short tenure of the Claimants, the Carrier's action is eminently reasonable.

The Organization also asserts procedural errors in the conduct of the hearings which were held for each of the Claimants, in that the charging officer was also the hearing officer. We find no basis on the record to suggest that the Claimants were denied due process as a result of this fact.

We find no reason to disturb the Carrier's actions or to mitigate the action.

AWARD:

Claims are denied.

James F. Searce
James F. Searce
Neutral Member

G. C. Edwards
G. C. Edwards
Carrier Member

W. E. LaRue
W. E. LaRue
Organization Member

Dated at Atlanta, Ga this 12 day of Aug, 1980