NICKEL PLATE, LAKE ERIE AND WESTERN,
AND CLOVER LEAF DISTRICTS

PUBLIC LAW BOARD NO. 1837

(MW-MUN-78-30)
Case No. 37

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 June 29, 1978, when it dismissed claimant Stephen E. Logan from service.

2. The dismissal of the claimant was excessive and unjustified. The claimant now be restored to service with all rights unimpaired and made whole for time lost.

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:

Claimant was an Extra Gang Laborer assigned to the X-083 Gang on the Muncie Division. The Claimant had about 2 and one-half years service at the time of his dismissal. The record shows that he returned to duty from furlough on April 17, 1978. Commencing May 16, 1978, the Claimant was absent from work and remained so until May 29, 1978. The Claimant contends such absence was due to a bronchial condition, but admits that he

neither received approval for such absence, nor informed the Carrier of his whereabouts for the period involved. Additionally, the Claimant was absent the entire first half of May; during this period, the Carrier was not officially aware of his whereabouts, either. The Claimant admits receipt of several letters from the Carrier during this period inquiring of his status and warning of the potential for discipline, but apparently did not see fit to respond. The only notice the Carrier received for this period apparently was via word-of-mouth by friends. The record indicates that medical certification covering the period from May 16 through 29 was submitted by the Claimant upon his return to duty. The record further shows that for the period of April 17, 1978 (upon his return to duty) to April 28, 1978, the Claimant was absent from duty unexcused seven and one-half of such days.

An employer has a right to know the status of its employees and likewise is entitled to expect them to be regular in attendance. Here, the Claimant was not available for various reasons either not known to the Carrier or, if known at all, via informal, non-official means. The record is replete with proof that the Carrier endeavored to ascertain his status and alert him to the result of continued absence. The Claimant's failure to respond was answered by his removal.

We find no error on the Carrier's part, particularly considering its repeated efforts to elicit response by the Claimant. We note he had several year's service at that time, but find this insufficient basis to disturb the Carrier's action. If further consideration is to be given the Claimant, it must come directly from the Carrier.

AWARD:

Claim is denied.

James F. Scearce
Neutral Member

G. C. Edwards
Carrier Member

W. E. LaRue
Organization Member

Dated at Washington, D.C. this 1st day of June, 1981