

NORFOLK PLATE, LAKE ERIE AND WESTERN
AND CLOVER LEAF DISTRICTS

PUBLIC LAW BOARD 1837

(MW-BVE-77-82)

Case No. 43

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 November 17, 1977, when it dismissed claimant Kent R. Nason from service.
2. The dismissal of the claimant was arbitrary and capricious. The carrier did not exercise discretion and fair judgment. The claimant now be restored to service with seniority and benefits 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:

Claimant was hired April 8, 1976; at the time of his dismissal he was classified as a Machine Operator. From the period of July through September 21, 1977, the grievant was absent eleven

(11) days. According to the Carrier the grievant was sent four letters -- on September 12, 13, 15 and 27, 1977--warning of potential discipline for such actions; according to the grievant he received all such letters on or about September 23, 1977. The grievant contends he was absent because of illness one day in August and five days in September, but indicated at the hearing that he produced no proof in that regard. (The Claimant identified other absences as having been in jail two days and in court three others.)

According to the Organization, the Claimant's immediate supervisor admitted knowledge of his whereabouts on the dates of absence; however, the record of the hearing indicates that while such official affirmed the Claimant had advised him as much, he had produced no proof or verification of his whereabouts on any of the dates of absence. The Organization also asserts error in the manner by which the hearing was conducted.

Employees owe a basic duty to be available for work consistently and timely. When they cannot, they are obliged to produce proof which may or may not establish a basis for their non-availability, depending on the circumstances. We take note of the Organization's complaint that the Claimant received all letters on the same day and that three of the letters were dispatched only a day apart. While we would remind the Carrier that such notices should be sent timely to absences involved, we do

not consider such circumstance as excusing the Claimant for his excessive absenteeism.

In sum, we find insufficient error as asserted by the Organization to disturb the Carrier's actions in this case.

AWARD:

Claim is 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 Washington DC this 1 day of June 1981