

PUBLIC LAW BOARD NUMBER 1837

Case Number 58
(MW-BVE-77-10 and 11)

PARTIES TO DISPUTE:

Norfolk and Western Railway Company
and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

1. The carrier has violated the Scheduled Rules of Agreement, effective February 1, 1951, supplements and amendments thereto, when it assessed discipline and dismissal of Shop Laborer (Trackman) William L. Gue on March 9, 1977.
2. Claimant W. L. Gue's record be cleared of all charges brought against him.
3. Claimant Gue be restored to service with seniority and all other rights unimpaired and be compensated for wage loss sustained in accordance with the provisions of Rule 22(e).

FINDINGS: This Board, upon the whole record and all 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 a Shop Laborer at the Carrier's Rail Welding Plant at Bellevue, Ohio at the time of events germane to this dispute; he had in excess of four years service at that time. The Claimant alleged to have suffered an industrial injury on the job on November 16, 1976; he also left the facility that day after completing only half of his shift. He reported the injury the following day, November 17, 1976, some hour and a half into that shift at which time he was taken to a clinic for observation. According to the doctor's report, the Claimant was to return to duty on November 22 of that year. (According to the Carrier, the Claimant's return to duty did not come until January 20, 1977.) As to the Claimant's early departure from work on that date, he indicated he had a ride to his home in Cleveland, Ohio and availed himself of such opportunity without prior notice or approval of his superior. As a result of a hearing the Claimant was charged with failure to promptly report an on-the-job injury and leaving work without permission on November 16, 1976 for which he was assessed a 30-day suspension.

The second part of the Claim in this case arises from events relative to the Claimant's absence from duty without permission on 14 separate days beginning January 21, 1977 to and

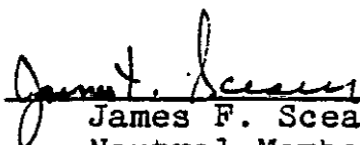
including February 11, 1977. The charge of such absences is unrefuted but the Organization asserts mitigating circumstances in that the Claimant had been forced to take the Bellevue assignment after he was affected by a reduction in force as a Trackman at Cleveland. Essentially, the Organization contends that the Claimant was unable financially to relocate to Bellevue and thus was required to travel daily to and from Cleveland -- a distance of several hundred miles. The Claimant asserts his vehicle was disabled during the period of his absence.


While this Board understands the problems that may have befallen the Claimant, we are mindful that he exercised his seniority right to the Bellevue job of his own volition. The Carrier cannot be expected to provide alternative transportation for the Claimant but clearly does have a right to expect him to be available for duty in a regular manner. Without intending to do so, the Claimant arguably abandoned his employment obligation. As to the suspension, we assume that the Claimant's removal was effectuated simultaneously with his suspension on the first charge. If not, and the Claimant was actually held out of duty prior to his removal, we direct that he be paid for half of such suspension, concluding that the injury did occur on the job and that the suspension as imposed was excessive. We note that the Claimant had no prior discipline and presumably had compiled

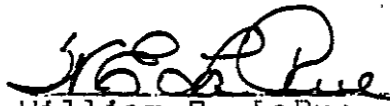
an acceptable work record prior to the events in this case. Therefore, we order that he be afforded an opportunity to return to duty on a special "last chance" basis. The Claimant should seize upon this opportunity to demonstrate himself as an exemplary employee. This Board will consider such opportunity wasted if the Claimant is ever before it again.

AWARD:

The Agreement was not violated by the actions taken by the Carrier; however, the suspension is reduced to 15 days and if the Claimant was actually held out of service, he be paid, with appropriate offsets. The termination shall be altered as set out in the Opinion.


James F. Searce
Neutral Member


E. N. Jacobs, Jr.
Carrier Member


William E. LaRue
Organization Member

Dated 4/24/82 at Atlanta, Ga