

PUBLIC LAW BOARD NO. 1838

Award No. 13  
Case No.  
MW-LP-76-102

Parties Brotherhood of Maintenance of Way Employes

to and

Dispute Norfolk and Western Railway Company

Statement of Claim 1. Carrier violated the effective Agreement by unfairly and unjustly dismissing Extra Force Laborer T. C. Carter, Jr., from service on September 22, 1976.  
2. Claimant Carter shall be reinstated to his former position, paid for all time lost, with vacation, seniority and all other rights unimpaired.

Findings The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Extra Force Laborer was dismissed from service by the Terminal Supervisor of Tracks, on September 22, 1976, as a result of being allegedly insubordinate to his foreman after reporting for work on 7:00 AM, September 22, 1976.

Claimant was granted a formal investigation on the charge of insubordination with his foreman.

The Division Engineer wrote Claimant, October 21, 1976 advising:

"After study of transcript of the investigation held October 6, 1976, in your behalf account you being held out of service for insubordination of your foreman on September 22, 1976, it is my decision you are dismissed from the service of the Norfolk and Western Railway Company, effective September 22, 1976."

As pointed out in earlier Awards of our Board, the function of this Board is to review the record to determine whether Claimant was accorded the due process, as required by his discipline rule, whether there had been sufficient evidence adduced to support the conclusions reached by Carrier and whether the discipline assessed was reasonable.

Here, we find that Claimant was accorded the proscribed due process. Claimant was handled in accordance with Rule 33 - "Discipline and Grievances."

There was sufficient evidence adduced to support Carrier's conclusion. However, this is not to say that had the Board been the original trier of facts that it too may have reached the same conclusion. The record reflects that Claimant reported to work late on Tuesday, September 21, 1976. As a result he was sent home and told to report the next morning, Wednesday, September 22nd. Claimant admitted that he also reported late on the morning of the 22nd. He was told by his foreman, on September 22nd to "get on the truck with Willie Joyner." The foreman repeated his instructions with the belief that Claimant had not heard him. At that time Claimant allegedly made the statement to the foreman that "I will knock

the m\_\_\_\_\_ f\_\_\_\_\_ down." When the foreman asked Claimant whether he was referring to him Claimant said that he was, whereupon the foreman sent Claimant to the office.

Claimant asserts that the foreman had told him "Get your ass over there" which statement the Foreman denied. Another laborer who had been on the truck in question testified that while he didn't hear what Claimant had told the foreman, he did however hear the Claimant say, "yes I was talking to you." However, another Section Laborer testified that he heard Claimant make the statement as alleged by the foreman. Thus, it was reasonably concluded that the foreman's testimony was the more accurate.

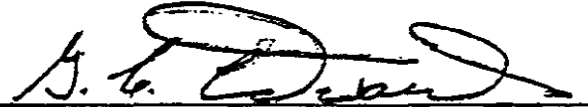
The Board finds that Carrier, after properly finding Claimant guilty, reviewed his service record, and in view of the fact that he had been dismissed about a year and a half previous, also for insubordination and had been restored on a leniency basis, that the assessment of dismissal in the instant case was appropriate. In the particular circumstances we believe that the discipline assessed was reasonable. Insubordination is a serious charge. Consequently, the Board will not set the discipline aside absent a showing that Carrier had acted arbitrarily, was vindictive or had acted in bad faith. Such showing is not shown by the instant record. However, this conclusion should not estop Carrier from restoring Claimant on a leniency basis, which was recommended at the hearing.

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Award      Claim denied as per findings.



A. D. Arnett, Employee Member



G. C. Edwards, Carrier Member



Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Wilmington, Delaware, November 26, 1979