

PUBLIC LAW BOARD NO. 1838

Award No. 16

Case No. MW-LP-77-106

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement of Claim 1. The dismissal of Extra Force Laborer M. L. Metz for alleged violation of rules pertaining to absenteeism was without just and sufficient cause and excessively harsh and disproportionate to the offense with which charged.
2. The Carrier shall return Claimant Metz to service, and accord him with all time lost.

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 was dismissed as a result of his excessive absenteeism and for not notifying or gaining permission from his Supervisor or a proper authority.

The Board finds that Claimant was accorded a fair hearing pursuant to Rule 33 - "Discipline and Grievances".

There was sufficient evidence adduced at the formal investigation held on August 30, 1977 to support Carrier's conclusions as to Claimant's culpability.

In view of Claimant's service record the discipline assessed is held to be reasonable. Claimant was hired on May 2, 1977

and up to the date of his dismissal on August 23, 1977 Claimant had absented himself from work a total of seventeen (17) full days and three (3) part days. In fact, the record reflects that he missed work on August 1, 4, 9, and 10, two hours on the 12th, 15th, 18th, 19th and 23rd. It further shows that Claimant had been given continuous warnings concerning the consequences of his absenteeism without permission and in such circumstances we find that it cannot be condoned. As pointed out in Third Division Award 18387 (Rosenbloom)

"The employment relationship and the contract itself are premised on the understanding that the employees will perform the work for which they were employed... Additionally, the contract clearly spells out on what days and under what circumstances employees shall be excused from reporting for work, demonstrating the unambiguous intent of the parties that, except where provided by contract, employees shall be expected to perform their duties on each day called for by the bulletins under which they work. It follows that if the Carrier has a right to rely on Employees performing their duties on each day called for by their bulletins, the Carrier has a concomittant right to be notified when these duties will not be performed so that alternative measures may be taken if necessary to carry on the business of the Carrier."

In the circumstances this Claim will be denied.

Award Claim denied.


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.