

PUBLIC LAW BOARD NO. 1838

Award No. 62

Case No. 63

Carrier File MW—LP-80-7

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Norfolk and Western Railway Company

Statement Claim is made to restore Claimant Ronald Beagle to service of
of Norfolk and Western Railway with vacation, seniority and all
Claim other rights unimpaired and that he be paid for 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 Beagle began service with Carrier on June 21, 1978 as a carpenter helper.

Under date of September 5, 1980 Claimant received a notice from Carrier which in pertinent part, read:

"You are hereby noticed to attend an investigation of Thursday, September 9, 1980 at 10:00 a.m. to determine your responsibility in connection with your insubordination in that you refused a direct order, your use of obscene and abusive language to your supervisor on August 29, 1980, and your excessive absenteeism from your assigned position, the latest of which was August 21, 1980."

The scheduled investigation was postponed, and, subsequently, was held on Tuesday, October 28, 1980. As a result thereof Claimant's

dismissal of August 29, 1980 was upheld. From that determination Claimant appeals.

The Board has read the transcript of the investigation and finds no evidence of prejudgment, partiality or unfair treatment of Claimant therein.

The transcript of the investigation discloses that on August 29, 1980, E. F. Henderson, Assistant Supervisor, Bridges and Buildings, Norfolk Terminal, spoke to Claimant Beagle concerning a prior instruction to present a doctor's note for Claimant's absence on August 21st. On August 21, 1980 Claimant had contacted Supervisor Henderson to request permission off to see a physician, said permission was given but with the specific instruction that Claimant present a doctor's slip when he returned to service.

Claimant returned to service on August 26th and failed to present a doctor's certificate.

Supervisor Henderson contacted Beagle to inquire why no doctor's slip had been presented. Claimant advised Supervisor Henderson that he forgot it, that it did not think it was such a "big deal". The following day, Supervisor Henderson testified, he again requested Claimant to present the doctor's certificate. Claimant again contends that he did not think that the presentation or note was important despite the fact that Supervisor Henderson warned him that if he did not have it by the following Friday he could no longer work.

On August 27th Supervisor Henderson spoke to Beagle on at least three different occasions concerning the note from the doctor.

On August 28th Supervisor Henderson left instructions that Beagle was not to be permitted to return to work until he presented the doctor's certificate. On August 29th Claimant Beagle appeared at Supervisor Henderson's office and the testimony indicates that Claimant thought that the whole thing was a "bunch of bullshit". From that point on, according to Henderson, Claimant's attitude and language degenerated to a point which did not require repeating herein.

Claimant denied using obscene and abusive language. Claimant's version of the events contravene that of the Supervisor and the corroborating witnesses called by Carrier.

Claimant contends that the requirement to present a note was an effort by Carrier to harass him, that it was evidence of the fact that Carrier was getting ready to fire him anyway.

Claimant sought to explain his excessive absenteeism by stating that he was suffering from arthritis, which he was seeking competent medical help to overcome.

The issue concerning Claimant's excessive absenteeism, his alleged insubordination, and his use of obscene and abusive language hinged upon one of credibility. As was held in Award No. 1 of PLB 1753 (A. Van Wart):

"...Carrier, as the trier of facts, chose to give greater weight to the testimony of its witnesses rather than to that of Claimant and his witnesses. Nothing in this record shows that Carrier arbitrarily or capriciously exercised such right."

The Board has examined the record and we find that Claimant was afforded a fair and impartial hearing free of any indication of prejudgment or prejudice, as stated. There was ample, credible

testimony presented to support the charges made, although Claimant denied the offenses and testified to the contrary. Carrier's hearing officers were in the best position to determine to determine and resolve any issues of credibility, and, in the absence of any showing of abuse, this Board is not in a position to substitute its judgment for Carrier's in these circumstances.

We can find no cause within the record to permit the Board to change the discipline assessed. Consequently, we are impelled to conclude that the claim must be denied.

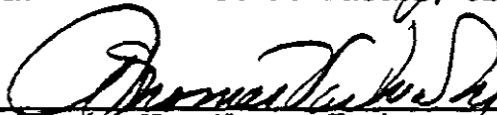
AWARD: Claim denied.



A. D. Arnett, Employee Member



E. N. Jacobs, Jr., Carrier Member



A. Thomas Van Wart, Chairman
and Neutral Member

Issued at Salem, New Jersey, May 3, 1982.