PUBLIC LAW BOARD NO. 1838

Award No. 64

Case No. 64
Carrier File MW-BL-80-70

Parties to Dispute: Brotherhood of Maintenance of Way Employes and Norfolk and Western Railway Company

Statement of Claim: The dismissal of B. E. Franklin, Painter on Force No. 2 New River District, was without just and sufficient cause, and wholly disproportionate to the alleged offense.
The Brotherhood requests that Claimant Franklin be restored to service with all rights unimpaired, and compensated for all time lost because of his dismissal since September 25, 1980.

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 Franklin entered Carrier's service in April of 1980. In September 1980, Claimant was working as a painter on Paint Force No. 2, under the general supervision of J. R. Shaver, Supervisor, Bridges and Buildings.

On September 25, 1980 Claimant was dismissed from Carrier's service.

Pursuant to Rule 33 of the applicable schedule, Claimant's representatives requested a formal investigation which was held on October 20, 1980, and as a result thereof the dismissal was upheld.

Fourth Division Award 1991, (Dolnick), in pertinent part, held:

> "It is a well established principle of the Board, that the evaluation of the facts in discharge cases is the responsibility of the Carrier's officers who conduct the hearing and the investigation. Our function is to examine the record, make sure that the Claimant was afforded a fair and impartial hearing under the terms of the Agreement; that there was no predetermined bias or prejudice against the Claimant; that there was no abuse of discretion in the imposition of the penalty; and that the punishment fits the crime, i.e., that the discipline was not arbitrary, unreasonable or excessive."

The record before us consisted of the testimony of several witnesses called by Carrier which set forth testimony indicating that since April of 1980 when Claimant began his employment with Carrier he had been consistently late on fourteen or fifteen occasions, often not reporting at all. During that period of time and up to the point of his dismissal on September 25, 1980; Claimant was given repeated counselling and warnings concerning his tardiness, absences without permission, and, was also disciplined by a thirty (30) day actual suspension. Immediately after returning to work from a thirty (30) day suspension he failed to show up for work at all, and failed to notify Carrier in accordance with the rules.

Claimant testified that on some occasions Carrier's records reflected that he was late, and/or absent, but he had, in fact, showed up at the job site, but because he was there after the Supervisor had left he was not shown to be at the work site. Additionally, Claimant advised that because of transportation problems sometimes he was required to utilize public transit, and other times, because of vehicle problems, he was not able to get to work on time. Further, Claimant advised the Board that during that period of time because of the distance between his home and the work site, the unreliability of public transit, his financial inability to be able to purchase adequate,

reliable transportation, all combined put him in a position where he was not able to perform in a manner that he would have liked to.

The Board concludes from the transcript that all procedural requirements were fairly met. Claimant was appraised of the charges against him, had his opportunity to testify on his own behalf, call witnesses, if any, on his behalf. There exists within the record sufficient, credible testimony to substantiate the charges made. Carrier manifested no abuse of its discretionary right to levy the ultimate penalty for an employee of such short duration who manifests such a totally unacceptable employment record. Despite repeated warnings, despite counselling, despite a thirty (30) day suspension for excessive tardiness and absences without permission, Claimant still persisted in an undesirable employment habit.

There exists no cause within the record to permit the Board to change the discipline assessed. The Railroad Industry, perhaps more than any other industry, is a paramilitary-type organization. Carrier of necessity must rely upon the integrity of its employees to faithfully discharge their duties. In the instant claim Claimant demonstrated a totally unacceptable employment trait. However understandable this trait may be, due to Claimant's lack of prior railroad experience and the shortness of his employment history, that employment trait remains an unacceptable one.

However, this Award should not stand in the way of Carrier reconsidering Claimant for reemployment. The matter of Claimant's restoration to service on a leniency basis is wholly within the discretionary authority of Carrier, and is not a proper function of the

Board. Therefore, on the record before us, 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.