

PUBLIC LAW BOARD NO. 1844

AWARD NO. 20

CASE NO. 20

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The sixty (60) day suspension of Trackman T. O. Clark was without just and sufficient cause, wholly disproportionate to the alleged offense and inconsistent with discipline assessed against others charged with the same offense (Carrier's File D-11-8-446).
- (2) Trackman Clark be compensated for all time lost and the discipline be stricken from his record."

OPINION OF BOARD:

On July 30, 1976, Claimant was working as a Trackman in a seven-member gang under the supervision of Foreman C. D. Gann. The crew was working on broken rails near Backley Road and had changed out one rail when the foreman released the men at noon for lunch. He instructed the men to return at 12:30 p.m. to change out the other broken rail. The record indicates that the men walked across the street and ate lunch at the Pagoda Inn. Three of the seven men returned at 12:30 and went back to work. Claimant and one other man did not return until 2:00 p.m. when the job was nearly completed. The foreman told them that he would not pay them for the afternoon, whereupon Claimant and the other man both asked to be allowed to work from 2:00 p.m. until 3:30 p.m. The foreman stated in words or substance that he would pay them off for the remaining hour and a half but they would have to answer for their whereabouts from 12:30 until 2:00. At that

point Claimant and the other employee stated they wanted to go home and the foreman responded, "You leave me sick, go on home." Claimant and his companion then left for home and the other two trackmen never did return to the work site that day.

Subsequently all four trackmen were charged with failure to protect their assignment from 12:30 to 3:30 p.m. on July 30, 1976, and failure to secure proper authority to absent themselves from duty during said period. An investigation was scheduled and held on those charges, following which Claimant and one of the other men were assessed a sixty-day suspension and the other two received 15 days' suspension.

There is virtually no dispute on the record relative to the foregoing facts. At the hearing and investigation Claimant offered as justification for his tardy return from lunch an assertion that he was suffering from the flu and additionally that the food he ate made him ill. We have reviewed the record carefully and we do not find this belated explanation persuasive, particularly in light of the fact that when he did finally return to the work site Claimant did not report any illness to his Foreman but rather sought to work out the balance of the day. Nor is there any satisfactory explanation why, if he was indeed ill, he could not walk across the street at 12:30 and request leave to absent himself because of his sickness. In all the circumstances we are persuaded that Claimant did fail to protect his assignment and did fail to secure proper authority to absent himself on July 30, 1976. Nor are we convinced that Carrier has failed in its burden of proof because the record shows that Claimant returned briefly to the job site at 2:00 p.m. whereas the notice of charge references the entire afternoon period, 12:30 through 3:30 p.m. We strive to deal with realities rather than supertechnicalities in labor relations matters. We are not favorably impressed

by precedents like Third Division Award 14778 cited by the Organization which lapsed into legal jargon and apparently failed to distinguish between the arbitration of labor disputes and criminal court proceedings. Our review of the record before us leaves no doubt that Claimant was not prejudiced by the Notice of Charges, no new charges were levied against him during the investigation, and Carrier has proven by competent evidence the substance of the charges contained in the Notice of Hearing.

Finally, the Organization asserts that the amount of discipline assessed Claimant is inappropriately severe and discriminatory because other employees found culpable of the same misconduct received only fifteen days' suspension. The record, however, contains unrefuted evidence that Claimant on May 19, 1976, had been disciplined for essentially the same misconduct in which he engaged on July 30, 1976. So far as the record shows, the employees who received a lesser penalty for the July 30, 1976, incident had no prior disciplinary assessments on their records. In the circumstances we cannot conclude that Carrier acted in an arbitrary or discriminatory fashion when it imposed a more severe penalty upon Claimant for his second offense than it did upon the first offenders. Progressive discipline, when supported by the facts and the individual employment records, is the accepted and established method by which an employer may seek to conform the employee's conduct to previously communicated standards. It is well established that a Carrier may, and should, consider the personnel record of the involved employee before assessing the amount of discipline to be imposed. See Third Division Awards No. 20032 and 20099. In general terms, like offenders with like records should be similarly treated but "That does not mean that the Carrier must, in every instance, impose the same sentence for like or similar offenses. What it does mean is that the sentence imposed in each case should be reasonable, that is,

just and proper considering the nature of the offense and the past record of the employee involved." See First Division Award No. 12428.

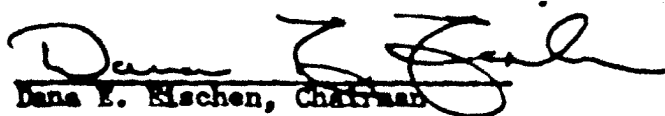
FINDINGS:


Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:


1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana F. Kischen, Chairman


O. M. Berge, Employee Member


R. W. Schmege, Carrier Member

Dated: April 11, 1978