

AWARD NO. 34

CASE NO. 39

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 dismissal of Mr. MC Tobin effective on October 15, 1976 was unwarranted.
- (2) Mr. Tobin should be reinstated with all rights unimpaired and paid for all time lost.

OPINION OF BOARD:

Claimant entered service of Carrier in 1973 and, in September 1976 was working on a section gang near Superior, Wisconsin. He was absent from work on Wednesday through Friday, September 29 through October 1, 1976. Following an investigation into those absences and a review of his personnel record, Claimant was dismissed from the service of Carrier.

A review of the record shows that Claimant was absent on September 29, 1976 because he had been drinking heavily the night before and was afraid to report for work because he was still under the influence of alcohol at his starting time of 7:30 A.M. For reasons developed more fully in Award No. 32 of this Board, this is not a valid excuse for absence or tardiness. With respect to September 30 and October 1, 1976 he testified without elaboration that due to marital problems he had other things on his mind those days besides going to work. Domestic difficulties, of course, can be

distracting but they do not per se justify failure to report for work.

There is no showing that Claimant was unavoidably detained in that regard, e.g., appearing in family court, and we have nothing but his general and unsupported assertions that his time and attention were distracted from his employment on those days. Nor has it escaped our attention that Claimant made no effort to contact his employer but rather simply failed to show up on September 30 and October 1, 1976.

The Organization argues that termination is an excessive quantum of discipline for three days' absence. We could seriously entertain this view if we were dealing with isolated instances, mitigating circumstances and a clean discipline record. But however, review of Claimant's personnel record shows that during his first year of employment he received three written reprimands that his attendance was not satisfactory. Within days of returning to service from a furlough in March 1975 he received two additional written reprimands for attendance problems. Notwithstanding such warnings he was absent 83 days during the remainder of 1975. On April 13, 1976 he was assessed 30 days actual suspension following investigation into his failure to protect his assignment. An overall view of his time and attendance record for the two years preceding his dismissal shows that he was absent some 40 percent of the time and averaged only three days' work per week. In the face of this sorry record of attendance and a progressive discipline record ranging from written reprimands to a 30-day suspension we cannot conclude that Carrier abused its discretion in assessing the ultimate penalty for the unexcused absences in September and October 1976. The claim must be denied.

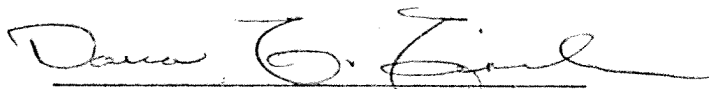
FINDINGS:

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 E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: Dec. 6, 1978