

AWARD NO. 59

CASE NO. 72

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 thirty (30) day suspension of Trackman S.G. Korunka was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File D-11-1-356)
- (2) (a) Trackman Korunka be compensated for all time lost and the discipline be stricken from his record due to this thirty (30) day suspension.

(b) Trackman Korunka be further compensated for all time lost due to the additional ten (10) day assessment contained in Notice to Serve Deferred Suspension No. 8."

OPINION OF BOARD:

Following due notice and timely investigation, Claimant was found guilty of failure to protect his assignment and being absent without authority on December 9, 1976. He was assessed thirty days actual suspension, which activated an earlier ten day record suspension, so that Claimant was actually out of service for a total of forty days.

There is no question that Claimant was absent without permission on the day in question from his job as Trackman at Madison, Illinois. The claim comes to us on allegations by the Organization that he was unjustly disciplined because he had valid excuses for his absence and the discipline was discriminatory.

The record evidence is sparse but unrefuted. It shows that Claimant and another employee were passengers in a car being driven to work on the morning of December 9, 1976 by a third Carrier employee. Apparently, at least one of the other employees, the driver, worked with Claimant under the same foreman. Due to icy road conditions, the driver decided it was too hazardous to proceed and he turned back. The three employees went to the house of the driver, telephoned the Yard Office and requested that the Section Foreman be contacted by radio and told of their inability to report that morning. The Yard Office employee who took the call agreed to relay that message but there is no showing one way or the other if the message was transmitted.

The undisputed record, however, does show that Claimant, alone among those three absentees, was assessed discipline. Carrier maintains that this distinction was appropriate because he had a bad prior discipline record and the others did not. We would not fault Carrier's logic if the question was what quantum of discipline to assess employees proven guilty of misconduct for which discipline should lie. But before reaching that question, it is first necessary to assess guilt or to prove misconduct on the instant charge. In this case, given the unrefuted explanations for their absence and the acknowledged effort to inform Carrier of their inability to get to work, none of the involved employees were culpable of misconduct. Yet, Carrier chose nonetheless to discipline Claimant. In the circumstances, it is evident that he was punished not for proven misconduct on December 9, 1976 but for absence per se, without regard to culpability, and primarily because of a bad prior record. This constitutes an abuse of discretion by Carrier which cannot be permitted to stand. The claim must be sustained.

FINDINGS:

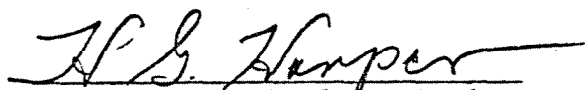
Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

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 violated.

AWARD

Claim sustained.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: Dec 5, 1979