

PUBLIC LAW BOARD NO. 2960

AWARD NO. 7

CASE NO. 14

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Trackman S. L. Seible was without just and sufficient cause and excessive (System File 2D-574).

(2) Trackman S. L. Seible shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the employees and the Carrier involved in this dispute are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute involved herein.

The Claimant, at the time of dismissal, was employed as a Trackman with four years seniority. On October 29, 1979, the Carrier charged the Claimant with ". . . absenting yourself from a portion of duty on October 26, 1979, without proper authority." As a result, the Claimant was dismissed.

A reading of the transcript reveals an admission by the Claimant that he did walk off the job after only working two hours and further that he did not have permission to do so. The Claimant also testified effectively that he left the job because, in his opinion, the Roadmaster was violating the contract by using foremen as machine operators, a work classification reserved to employees with machine operators' seniority. The Claimant had seniority in this classification.

The evidence is clear that the Claimant was guilty as charged. His clear admission that he left his assignment without permission is more than substantial evidence of his guilt. Additionally, his behavior is not justified by the alleged contract violation regarding the use of foremen on machine operator positions. It is well established that individuals must comply with the instructions of the supervisors and grieve the issue later through appropriate channels. Walking off the job is not the appropriate channel, the grievance procedure is.

The remaining question for the Board to consider is whether dismissal is the appropriate quantum of discipline. The Carrier argues that the Claimant's past record justifies dismissal. The Organization replies that the past record cannot be considered because it was not handled on the property. The Carrier argues that it was, directing attention to a reference to the past record in a letter. The Organization remained adamant at the Board hearing that they never received a copy of the past record. It is well established that

the party normally relying on the past record should clearly and definitely establish that the past record was exchanged in the handling on the property.

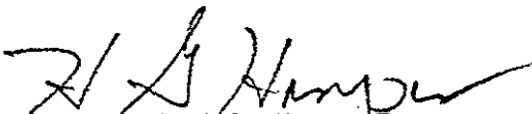
In this particular case it is not necessary to make a decision as to whether the past record was discussed on the property or not. This is so because even assuming arguendo that it was exchanged and therefore properly before the Board, the past record would not support dismissal. Progressive discipline implies that for certain offenses some form of actual suspension should proceed discharge. In this case, the Claimant has never received an actual suspension. He has only received two deferred suspensions. Dismissal for this type of offense as a first-time suspension is excessive and arbitrary. A more appropriate penalty would be a significant suspension. Therefore, we will direct the Claimant to be reinstated without backpay.

AWARD

Claimant is to be reinstated all rights unimpaired but without pay for time lost within 30 days.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Date: Oct 26, 1981