

PUBLIC LAW BOARD NO. 3460

Award No. 3
Case No. 3

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railroad Company

STATEMENT
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) the thirty (30) day suspension of Cook's Helper C. R. Gibbs, June 4 through July 3, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) the dismissal of Cook's Helper C. R. Gibbs June 4, 1980, was without sufficient cause and wholly disproportionate to the alleged offense.
- (3) Cook's Helper C. R. Gibbs be reinstated with all rights unimpaired and be compensated at his applicable rate of pay for all time lost, as per Rule 40G of the Agreement."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant had been employed as a cook's helper at Hampton, Nebraska. He was scheduled to work his regular assignment on April 28 through May 2, 1980, and did not report for duty. Further, he failed to notify proper authority of his intended absences and he failed to request permission to be absent. He was thereafter cited for investigation for the purpose of ascertaining the facts with respect to his failure to report to duty on the dates indicated. He was found guilty of the charges and dismissed from service.

There is no dispute with respect to the fact that claimant was absent continually from April 25 through May 2, 1980. The principal defense mounted by the Organization was that claimant was assigned to outfit cars at the location of his job.

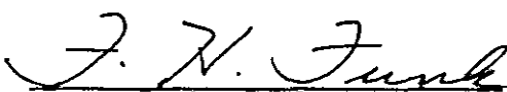
According to his testimony, the outfit cars were in deplorable condition and unfit for human habitation. It was for this reason that claimant indicates he was absent on the dates indicated. Carrier argues that claimant chose to absent himself without securing permission on the dates involved and was clearly in violation of Carrier's rules. Carrier argues that the condition of the outfit cars had no bearing whatever on claimant's obligation to perform on his job. Carrier maintains further that in view of claimant's prior record which involves discipline, among other things, for a similar offense, it was fully justified in determining that he should be dismissed.

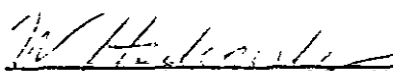
There is no dispute with respect to the facts in this matter. Claimant was, indeed, absent on the dates indicated and his sole excuse was the condition of the outfit cars. While his allegations concerning the conditions of those cars may be correct, that opinion has no bearing on his absences on the dates he was assigned to work. The principle of work now and grieve later is so well established as to require no elaboration or citation by this Board. In this instance, claimant simply refused to abide by the rules and flagrantly disobeyed the rules for purposes which he deemed to be correct but which have no bearing on his responsibility as an employee. Carrier was justified in its decision to terminate him in view of the flagrancy of the particular abuse in which he indulged. There is no choice but to consider Carrier's actions as correct and without discriminatory or harsh motives.

AWARD

Claim denied.


I. M. Lieberman, Neutral-Chairman


F. H. Funk, Employee Member


W. Hodynsky, Carrier Member