

PUBLIC LAW BOARD 3530

Case No. 21
Award No. 21

PARTIES TO DISPUTE:

Norfolk and Western Railway Company

And

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

Pay for time lost, seniority and vacation unimpaired as a result of the forty (40) day actual suspension assessed on November 8, 1982.

FINDINGS:

Claimant, M.S. Queensberry, at the time of the dispute in question, was employed by the Carrier as an Extra Force Laborer at Norfolk, Virginia.

On October 1, 1982, Claimant was dismissed from service for excessive absenteeism and unsatisfactory work. A formal investigation was held on October 29, 1982. As a result of the investigation, Claimant's dismissal was reduced to a 40 day suspension.

The issue to be decided in this dispute is whether the Claimant was justifiably disciplined by the Carrier under the Agreement.

The position of the Carrier is that Claimant's excessive absenteeism rate and prior job performance warranted the

discipline imposed. The Carrier first contends that Claimant's absenteeism rate was irregularly high. The Carrier has shown that between July 6, 1982 and September 30, 1982, Claimant was either significantly late or absent some 14 times.

The Carrier cites Rule 26 to support its position. That Rule states, "An employee desiring to be absent from service must obtain permission from his foreman or the proper officer. An employee detained from work on account of sickness or for other unavoidable cause shall notify his foreman or the proper officer as early as possible."

The Carrier contends that Claimant's absenteeism was excessive and indicates the Claimant's lack of dedication toward protecting his assignment. The Carrier further contends that Claimant's past record indicates that his absenteeism has been a long-standing problem. The Carrier notes that Claimant has been counseled and disciplined for previous incidents of absenteeism/lateness.

In support of its position, the Carrier cites several Board Awards wherein it was held that Carrier may discipline an employee for failure to fulfill his job assignment. The Carrier contends that these Awards illustrate that Claimant's failure to protect his employment merited his discipline. The Carrier further contends that it does not matter whether the absences were legitimate or not. The Carrier's position is that it has the right to expect regular attendance from its employees.

Finally, the Carrier refers to an incident that took place on September 28, 1982, at the Crist Motel. The Carrier alleges that the Claimant caused major damage to the room he was staying in, and that his actions did not become an employee of the Carrier.

The position of the Organization is that the Carrier unjustifiably disciplined the Claimant under the Agreement. The Organization first asserts that the Carrier charged Claimant with a violation of General Notice "N" of its operating rules. The Organization further notes that Claimant was never issued a book of working rules, and therefore was unaware of Rule "N".

The Organization contends that the Carrier's actions were arbitrary under the circumstances. The Organization maintains that the 40 day suspension has no rational basis, and is just an arbitrary figure picked by the Carrier.

The Organization also contends that Claimant's absences were excused by the Carrier, and that Claimant had legitimate excuses for all the absences/latenesses in question. The Organization cites Claimant's heat stroke and sinus condition as the major causes for his absences. The Organization also cites an accident to Claimant's truck which caused him to miss several days of work. The Organization concludes that the absences in question were legitimate ones and therefore cannot be grounds for discipline.

The Organization denies that Claimant's work performance was unsatisfactory as alleged by the Carrier. The Organization cites the testimony of Roadmaster R.D. Cash, who stated in reference to Claimant's performance that, "When I was there he was working alright." The Organization maintains that the Carrier presented us evidence that Claimant's job performance was unsatisfactory.

Thirdly, the Organization contends that the Carrier failed to establish Claimant's guilt with regard to the incident at the Crist Motel. The Organization further contends that the incident in question has no bearing on this Claim, and should properly have been handled under the Agreement, wherein it states "Employees will also be liable for any damage to accommodations due to their improper actions." The Organization agrees that if Claimant was guilty of the Motel offense, it would have been a simple matter to compel claimant to pay for any damages he caused.

The Carrier has established that Claimant's absenteeism rate for the period in question was excessive and that the Claimant was significantly late on several occasions. The Carrier has shown by substantial evidence that the Claimant's attendance record was unsatisfactory.

The Board finds that the dispute concerning the Motel damage should not be part of this dispute. The Carrier's actions in disciplining the Claimant were in reference to his poor job

performance and excessive absenteeism. We do not feel that the Motel incident should enter into our decision regarding this Claim, and will not be considered.

The evidence of record establishes that Claimant, for the period cited, had an excessive number of absences. The Carrier has a right to discipline an employee for excessive absenteeism, even for absences that are excused. The Carrier has a right and a need for reliable employees, and therefore is within its rights to discipline employees who are absent to an excessive degree. The Carrier has also shown that the Claimant had been previously warned about his absenteeism, and therefore was aware that continued absences might result in discipline by the Carrier.

Finally, we find that the Carrier's discipline in this case was neither arbitrary, capricious, or an abuse of discretion, and therefore we will not substitute our judgment for that of the Carrier. Based on the evidence presented, we find the Claimant guilty of excessive absenteeism and tardiness. Therefore, the Claim must be denied.

AWARD:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: 8/7/85