

PUBLIC LAW BOARD NUMBER 3530

Award Number: 45
Case Number: 45

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Carpenter-Helper. M. E. Elliot, 133 Onondaga Road, Virginia Beach, Va. 23463, was dismissed from service on July 14, 1983 for alleged violation of trespassing on No. 1 Shiploader Pier 6, Lamberts Point, Norfolk, Va. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request reinstatement with all pay for lost time with vacation and seniority rights unimpaired.

FINDINGS:

Claimant, at the time of the incident in question, was employed by Carrier as a Carpenter-Helper. By letter dated July 14, 1983, Claimant was dismissed from service by Carrier for allegedly trespassing and allowing others to trespass on Carrier's property. An investigation was held concerning the above-cited charges on September 29, 1983. Carrier reaffirmed

its dismissal of Claim for the above reasons, and because of Claimants' alleged intoxication on the night in question.

The issue to be decided in this dispute is whether Claimant was dismissed by Carrier for just cause under the Agreement.

The position of the Organization is that Claimant was improperly dismissed by Carrier, maintaining that Claimant's trespass onto Carrier's pier was not an offense worthy of dismissal for several reasons.

First, the Organization alleges that the pier in question has long been used for touring purposes, and further that Claimant had observed several such tours being conducted. The Organization contends that this fact, unrefuted by Carrier, indicates that the pier was not dangerous as alleged by Carrier.

The Organization further alleges that Claimant had never been instructed by Carrier not to visit the pier after working hours. The Organization maintains that without such prior notice, Carrier's discipline of Claimant for being at the pier was excessive and unwarranted.

Finally, the Organization maintains that the discipline

imposed was excessive, particularly in light of Claimant's five years of service with Carrier. The Organization cites awards holding that discipline imposed must reasonably fit the offense for which it is imposed, concluding that in light of Claimant's prior service record and the relatively minor offense involved, the discipline imposed was arbitrary and excessive.

The position of the Carrier is that Claimant was justifiably dismissed for his conduct on July 8, 1983. Carrier contends that evidence elicited at the investigation clearly established that Claimant trespassed onto Carrier's pier (Pier 6, Lamberts Point, Norfolk, Va.), allowed non-employees to trespass with him, and was intoxicated at the time. Carrier further maintains that such conduct placed both Claimant and the two other trespassers in serious jeopardy. Carrier alleges that the coal loading facility (of which the pier is part) is a dangerous area, particularly at night, and particularly while under the influence of alcohol. Carrier cites Claimant's testimony that he admitted to drinking before entering the pier.

Carrier further argues that leniency was considered and rejected, and that the Board may not require leniency when Carrier has acted within its discretion in imposing discipline. Carrier cites several awards holding that leniency is a

decision that may only be made by Carrier.

After review of the record, the Board finds that the claim must be denied.

It is not the purpose of this Board to rehear an investigation that Carrier held, but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

There is no genuine dispute of fact concerning Claimant's culpability in this dispute. Claimant admitted his guilt at the investigation, and the Organization does not refute that admission of guilt. The only issue to be decided, therefore, is whether the discipline imposed by Carrier was excessive. We find that it was not.

We agree with those awards cited by Carrier holding that it is not the purpose of the Board to mandate leniency in particular cases. Our role is limited to a determination of whether the discipline imposed was arbitrary or an abuse of Carrier's discretion. In the present case, Claimant subjected himself and others to potential hazard, trespassed on Carrier's property in violation of law, and conducted himself in a highly irresponsible manner. While Carrier may, in considering Claimant's prior record and other factors, consider a more

lenient penalty, it is under no obligation to do so. Were this Board to hold that the discipline imposed was excessive, it would not be for "leniency" purposes, but rather based upon a finding that the discipline imposed could not reasonably be justified to meet the level of the offense committed. We make no such finding in the present case. Accordingly, the claim must be denied.

AWARD

Claim denied.

Nicholas Kumar
Neutral Member

J. A. Abbott Jr.
Carrier Member

Royce L. Hall
Organization Member

Date: 1-21-87