

PUBLIC LAW BOARD NUMBER 3530

Award Number: 59

Case Number: 59

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Extra Force Laborer, R. D. Ward, 1108 Oak Street, Kenova, WV 25530, was assessed a 15 day actual suspension for alleged excessive absenteeism. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request payment for the 15 day suspension with seniority and vacation rights unimpaired.

FINDINGS

Claimant was employed as a Track Laborer on Carrier's Scioto Division. By letter dated June 22, 1984, Claimant was notified to attend an investigation concerning charges of excessive absenteeism. An investigation was held on August 10, 1984. By letter dated August 27, 1984, Claimant was given a 15 day suspension.

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

The position of the Organization is that Carrier failed to substantiate the charge of excessive absenteeism against Claimant.

Initially, the Organization contends that Carrier violated the Agreement by failing to afford Claimant an investigation within 30 days of its knowledge of the offense. The organization argues that Carrier based Claimant's discipline on absences dating back several months and that the use of those past absences violated the 30 day rule, since Carrier was aware of the absences at the time. The organization additionally argues that Carrier failed to establish any impropriety regarding any of the previous absences cited, and has therefore established no substantive basis for the charge.

The position of the Carrier is that Claimant was properly disciplined for excessive absenteeism.

Initially, Carrier contends that Claimant's record of excessive absenteeism and tardiness was clearly established at the investigation. Carrier cites the testimony of Assistant Roadmaster R. R. Deemer that Claimant was absent eight times and late on five occasions between April 25, 1984 and June 25, 1984. Carrier further cites the testimony of other employees confirming Claimant's absenteeism and tardiness record. Carrier maintains that there is therefore no question concerning Claimant's record of excessive absenteeism and tardiness. Carrier further argues that Claimant's testimony failed to explain or justify several of the absences cited.

Finally, Carrier argues that it did not violate the 30 day investigation requirement by basing Claimant's discipline on absences from prior months. Carrier argues that it was not "aware" of the offense as required under the 30 day rule until Claimant's absences reached an unacceptable level. Carrier argues that the Organization's interpretation of the rule would make it impossible to discipline an employee for extended absenteeism problems, since such problems ordinarily do not manifest themselves within a 30 day period. Carrier contends that Claimant had been alerted to his absenteeism problem through warnings and that the mere failure to discipline Claimant for prior absences does not invalidate the discipline imposed in this case.

After review of the record, the Board finds that the Organization's 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.

Initially, we find the organization's argument based on the 30 day rule unpersuasive. The rule requiring investigation within 30 days of knowledge of offense is designed to prevent an employee from being disciplined on the basis of past conduct not previously challenged by Carrier. However, the essence of a

charge based on excessive absenteeism is that a long-standing and chronic failure to protect employment exists. Therefore, the 30 day rule only requires Carrier, upon notice of excessive absenteeism to afford an accused employee and investigation within 30 days. We find therefore that Carrier did not violate Claimant's right to an investigation within 30 days of notice of the offense.

Finally, we find that Carrier acted within its discretion in imposing the 15 day suspension. The evidence presented by Carrier established that Claimant was notified of his need to protect employment on a consistent basis and that he was absent or late on several subsequent occasions. The fact that Claimant was not disciplined for the previous absences does not invalidate the discipline imposed, since it is the continued failure to protect employment that serves as the basis for the charge brought. Carrier has a right and a need to expect its employees to be regular in attendance. In light of Claimant's failure to do so, we cannot find that Carrier abused its discretion by imposing the 15 day suspension.

AWARD

Claim denied.

Nicholas Kumar
Neutral Member

J. C. Lyons
Carrier Member

Bruce L. Hall
Organization Member

DATE: 1-29-88