

PUBLIC LAW BOARD NO. 3530

Award Number: 77

Case Number: 77

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Laborer E. W. Stone, Jr., 629 Earl Street, Norfolk, VA 23505, was dismissed on January 3, 1986 for alleged false statements as a witness in an investigation held on August 16, 1985. Claim was filed by the Employees in accordance with Railway Labor Act and agreement provisions. Employees request reinstatement with pay for all lost time with vacation and seniority rights unimpaired.

FINDINGS

Claimant entered Carrier's service on October 19, 1976.

By letter dated November 13, 1985, Claimant was notified to attend a formal investigation on charges that he had given false statements while a witness in a formal investigation. The investigation was postponed to December 16, 1985, at which time Claimant failed to appear. The investigation was delayed for 30 minutes and then proceeded without Claimant. By letter dated January 3, 1986, Claimant was dismissed based on evidence

adduced at the investigation.

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The issue to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement; and if not, what should the remedy be.

On August 16, 1985, Claimant appeared as a witness in a formal investigation of drug use by other employees while they were on a bus traveling from Norfolk, Virginia to Waldo, Ohio. At that time, Claimant testified under oath that: (1) he had not knowledge of marijuana use by other employees on the bus; and (2) that Randy Pike reported the marijuana use to a superior. On November 1, 1985, Claimant advised Kathy Barbour, Assistant Supervisor Maintenance of Way Personnel, that the testimony he gave at the August 16 investigation was false. On November 4, 1985, Claimant provided a notarized statement that: (1) three employees had been smoking marijuana on the bus; and (2) he, not Randy Pike, had informed on them.

Rule 1713 provides that:

1713. Negligence in handling Company business, sleeping on duty, wilful neglect of duty, viciousness, desertion, dishonesty, insubordination, immorality, disloyalty, making false statement, or concealing facts concerning matters under investigation are sufficient cause for dismissal.

An employee lying down or in a slouched position with eyes closed or with eyes covered or concealed will be considered sleeping.

The position of the Organization is that dismissal is too severe a

penalty for the Carrier to impose. The Organization contends that Claimant has been dismissed for rectifying his error by telling the truth and setting the record straight. The Organization points out that to dismiss him for coming forward on his own will discourages other employees from disclosing truths that they might be hiding. The Organization admits that Claimant made false statements but it contends that Claimant has been given a "life sentence" for a mistake of judgment which he later corrected.

The position of the Carrier is that Claimant was justly dismissed for perjury. The Carrier maintains that Claimant's perjury is clear on the face of the evidence. The Carrier rejects the Organization's argument that Claimant is being dismissed for telling the truth by pointing out that Claimant would never have had to confess to this embarrassing truth if he had not committed perjury at the first investigation. Similarly, the Carrier maintains that rather than discouraging truth telling, dismissal of Claimant will encourage employees to be truthful in their relations with the Carrier and fellow employees. The Carrier argues that Claimant's false testimony had grave implications on the lives and careers of the employees charged. The Carrier further maintains that Claimant's perjury breached the trust on which the employer-employee relationship is built. Finally, the Carrier contends that Claimant has violated Rule 1713.

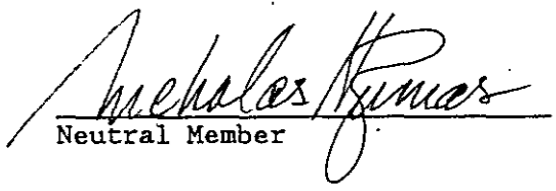
After review of the entire record, the Board finds that Claimant was dismissed for just cause, but modifies his punishment and reinstates him without back pay.

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The Carrier has established by substantial, credible evidence in the record that Claimant made false statements under oath at the August 16, 1985 investigation. By doing so, Claimant breached a bedrock obligation to the Carrier. Human relations at all levels, including industrial relations, are based on trust and telling the truth. Claimant's violation of the obligation to deal honestly with the Carrier and the violation of the sanctity of his sworn oath are outrageous. Still, Claimant's circumstances suggest to this Board that reinstatement is the more appropriate remedy.

AWARD

Claim disposed of per Findings herein.


Neutral Member


Carrier Member


Organization Member

Date: JUNE 12, 1989