

PUBLIC LAW BOARD NO. 3530

Award Number: 78
Case Number: 78

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

M. D. Kelly, 505 Rogers Street, Bluefield, WV 24701 was dismissed on January 16, 1986 for alleged excessive absenteeism. Claim was filed by the Employes in accordance with Railway Labor Act and agreement provisions. Employes request reinstatement and pay for all lost time with vacation and seniority rights unimpaired.

FINDINGS

Claimant entered the Carrier's service on November 13, 1978.

By letter dated November 26, 1985, Claimant was notified to attend a formal investigation on charges of excessive absenteeism. At the investigation, rescheduled to January 10, 1986, Claimant failed to appear. By letter dated January 16, 1986, Claimant was dismissed based on evidence adduced at the investigation.

The question 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.

Claimant has received 11 letters of warning for absenteeism during his service with the Carrier, six of those between April and December 1985. Between August 5 and September 12, 1985, Claimant was absent from his assignment 11 out of 24 work days. His reasons for being absent varied, including his own illness and the death of a close family friend. The death of a family friend precipitated a three-day absence but was never substantiated in writing, although no substantiation was requested by Claimant's supervisor.

The position of the Organization is that Claimant was dismissed without just cause because the severity of the discipline is not reasonably related or proportional to the offense. The Organization admits that Claimant has been absent from his assignment, although it does not admit to the number of absences alleged by the Carrier. The Organization points out that Claimant's supervisor testified that he was only genuinely concerned about the three-day absence caused by the death of Claimant's family friend, and that this concern was actually about Claimant's failure to substantiate the absence in writing. The Organization contends that it is unreasonable for the Carrier to have dismissed Claimant for not producing written substantiation when it never requested substantiation from Claimant.

The position of the Carrier is that Claimant was justly dismissed for excess absenteeism. The Carrier maintains that Claimant's extremely poor

attendance record justifies his dismissal because an employe has an obligation to energetically protect his position by appearing for work regularly. Moreover, the Carrier contends that dismissal is an appropriate discipline because it is well established that an employe unable or unwilling to fulfill his work obligations does not have to be retained.

After review of the entire record, the Board finds that Claimant was dismissed for just cause under the Agreement.

The Carrier has established by substantial, credible evidence in the record that Claimant has been absent on numerous occasions both leading up to his dismissal and throughout his service. The Organization's contention that the Carrier is only concerned with Claimant's three-day absence, due to a family friend's death, is without foundation. Similarly misplaced is the Organization's understanding that the Carrier's concern was only that Claimant did not produce written substantiation of that one absence.

Rather, the Carrier's justifiable concern is Claimant's repeated absence. It is well settled that repeated absence or tardiness is an adequate basis for dismissal, even if there are valid excuses for some of the instances of non-attendance. Part of the foundation of the employment relationship is the employe's obligation to regularly present himself or herself for work and to carry out his/her assigned duties. Repeated absences make this impossible.

There is no evidence that the Carrier was arbitrary, capricious or

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discriminatory. Dismissal is an appropriate discipline in these circumstances.

AWARD

Claim denied.

Nicholas Rumar
Neutral Member

J. Miller
Carrier Member

Bryce L. Hall
Organization Member

Date: JUNE 12, 1989