

PUBLIC LAW BOARD NO. 3845

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of
Way Employees

and

Norfolk and Western Railway
Company (Lake Region)

Case No. 10
Award No. 10

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Machine Operator R.B. Beebe for improper payroll reporting of time was without just and sufficient cause and excessive. [Organization File: MW-NWK-79-11].

(2) Claimant R.B. Beebe shall be reinstated with seniority, vacation and all other rights unimpaired and that he be paid for all monies loss suffered by him".

OPINION OF THE BOARD

Claimant R.B. Beebe entered into employment with Carrier in October, 1974. On July 15, 22 and 25, 1983, while performing unsupervised brush cutting operations, Claimant was observed reporting late for work. He nevertheless reported on payroll

documents submitted by him to his employer that he worked eight hours on each of those three days.

On August 15, 1983, when confronted with these facts, the evidence of record reveals that Claimant acknowledged his guilt as to two of the three occasions, although he characterized his actions as a "mistake." He was thereupon dismissed from Carrier's service.

The investigative hearing was held on September 1, 1983 and transcribed by Carrier's tape recorder. Because a portion of the tape was thereafter discovered to be blank, the investigation has to be reconvened and was not finally concluded until September 19, 1983. Claimant's dismissal was confirmed by letter dated September 20, 1983.

The Organization alleges that procedural error by Carrier and a pre-judgment of Claimant's guilt combined to deny him due process in this case.

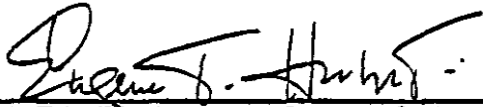
The most troubling of these allegations has to do with Carrier's failure to produce an accurate transcription of the original investigation hearing. This Board is of the opinion, however, that whatever procedural flaws may be apparent from the record, they do not amount to a denial of due process.

Under these circumstances, Claimant was afforded substantial due process and the evidence of his guilt was sufficient to substantiate the charge against him; namely, an attempt to defraud his employer.

While Claimant's disciplinary record is far from ideal, no other offenses involving moral turpitude occurred during the course of his nine-year employment with Carrier. Accordingly and in light of all the evidence presented, this Board is convinced that, if returned to service, Claimant will not repeat his mistake. The punishment of dismissal is, under the circumstances, excessive.

AWARD

Claimant shall be reinstated to his former position with seniority intact, but without pay for lost time or benefits. This award shall be implemented within 30 days of the date signed by this Board.



E.T. Herbert, Neutral Member



S.C. Lyons, Carrier Member



H.G. Harper, Employee Member

Carrier Dissents to Award

June 25, 1985