

PUBLIC LAW BOARD NO. 912

PARTIES) NORFOLK AND WESTERN RAILWAY COMPANY
TO)
DISPUTE) UNITED TRANSPORTATION UNION (C&T)

STATEMENT OF CLAIM: Claim of St. Louis Switchman J. G. Cann, Sr. who was dismissed from service of the Norfolk and Western Railway Company on January 9, 1975, requesting claimant be reinstated with all seniority rights and privileges restored, and compensated for all time lost, charged with allegedly showing fraud, due to his marking of his adverse allowance form.

FINDINGS: This Public Law Board No. 912 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the operations and services on the St. Louis Terminal were consolidated on June 1, 1972 as a result of the merger of the Norfolk and Western. Article 7 of the Agreement signed on April 22, 1972 provided protection for the employees.

The claimant herein held a regular assignment in the North St. Louis territory of the St. Louis Terminal prior to the consolidation. Sometime thereafter, due to force reductions, the claimant was furloughed and was in the status of a furloughed employee during the period of January through October, 1974.

By letter dated December 28, 1973 the Superintendent notified the claimant that Article 7, Section 2 of the April 22, 1972 Consolidation Agreement provided protection for the claimant, and the last paragraph stated:

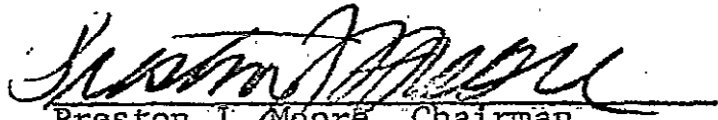
"If you are engaged in other employment while not working as yardman for Norfolk and Western, or on the Norfolk and Western yardmen's extra list, or working for Norfolk and Western in some other capacity, and are claiming a dismissal allowance from Norfolk and Western while not working for Norfolk and Western, you must report your gross total compensation from employment other than with Norfolk and Western in Line 3(b) . . ."


The claimant submitted monthly claims on the prescribed form but failed to show any outside earnings in the space so provided in Paragraph 3(b). The Carrier ascertained that the claimant had employment and had earnings for each month from January through October of 1974.


The claimant was notified to report to the office of the Superintendent for a formal investigation. He was charged with his failure to report the outside earnings and with concealment of the outside earnings for the Period January through October of 1974 and for his failure to comply with the provisions of Section 4(c), Article 13 of the January 27, 1972 Agreement.

The claimant had earnings from \$742.00 up to \$2151.00 during the months involved. He reported none of those earnings. The Organization contends that the claimant was a displaced employee and not a dismissed employee. For the purposes of this decision, it is not necessary to decide in which category the claimant was placed. He accepted the money from the Carrier. He had been given directions to report outside earnings and he failed to do so. He accepted the money when he was fully aware that he should have reported the outside earnings to the Carrier. There is simply no basis to overrule the decision of the Carrier.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member