

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 12
Docket No. 130

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of W.F. Novak for allegedly leaving his assignment without proper authority and failing to provide information concerning a prescribed drug was without just and sufficient cause, capricious and unsupported by the record. [Organization File 9KB-4312 D; Carrier File 81-87-204]
- (2) Claimant W.F. Novak shall be allowed the remedy prescribed in Rule 19(d)."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employees and the Carrier involved are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute herein.

On July 1, 1987, Carrier's roadmaster asked Claimant to produce the prescription form for medication that Claimant had taken; Claimant said that the form was in his car. When the roadmaster later returned to the work site, Claimant was not there. On the following morning, Claimant gave a copy of the prescription form to the roadmaster. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility for leaving your assignment on July 1, 1987 without proper authority and your failure to furnish information relative to taking a drug prescribed by your dentist prior to being released by the Chicago and North Western Medical Department to return to work.

The investigation was held as scheduled, and a copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner. The Claimant was later

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reinstated on March 7, 1988, and this is now a claim for back pay and removal of discipline.

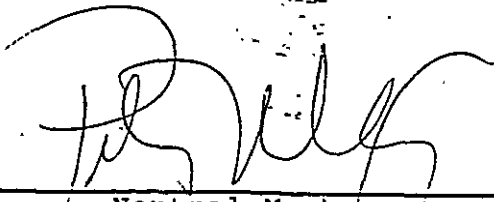
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the offenses with which he was charged.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find it to have been unreasonable, arbitrary, or capricious. Given the nature of this incident, the admission by the assistant vice president and division manager that a misunderstanding could have taken place, and the excellent work record of the Claimant during his seven years of employment, this Board finds that the action taken by the Carrier was unreasonable and arbitrary. The only appropriate discipline here would have been a 60-day suspension. This Board therefore finds that the discipline is reduced to a 60-day suspension, commencing on the date of the original discharge, and the Claimant is to be made whole for all back pay and other benefits which he lost after 60 days and up to his eventual reinstatement, which occurred on March 7, 1988.

Award:

Claim sustained in part. The discipline is reduced to a 60-day suspension, and the Claimant is to be made whole for all back pay and lost benefits after 60 days. The Claimant's personnel file is to be

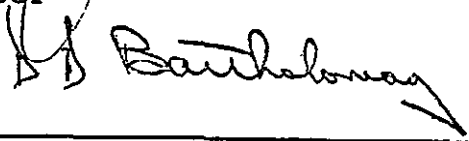
amended accordingly.



Neutral Member



Carrier Member



Organization Member

Date: Sept. 23, 1988