

AWARD NO. 319
Case No. 319

File No. Howell-B-04-19-INV/MW-ATLA-19-18-LM-264 SOU

SPECIAL BOARD OF ADJUSTMENT NO. 1049

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
) DIVISION – IBT RAIL CONFERENCE
TO)
)
DISPUTE) NORFOLK SOUTHERN RAILWAY COMPANY
) (FORMER SOUTHERN RAILWAY COMPANY)

STATEMENT OF CLAIM:

Claim on behalf of the System Committee of the Brotherhood that:

1. The Carrier's discipline (dismissal) of Mr. B. Howell, issued by letter dated May 23, 2019, in connection with his alleged failure to comply with the instructions issued by Manager of Administrative Services on February 26, 2019, which were to provide Norfolk Southern Health Services with medical documentation to substantiate his need for continued leave was arbitrary, capricious, unjust, unwarranted, unreasonable, harsh and excessive (System File Howell-B-04-19-INV/MW-ATLA-19-18-LM-264 SOU).

2. As a consequence of the violation referred to in Part 1 above, Claimant B. Howell shall now be reinstated to service with all seniority rights restored and all entitlements to and credit for benefits restored including vacation and health insurance benefits, being made whole for all financial losses as a result of the violation including compensation for: (1) straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to Claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by Claimant while wrongfully removed); (2) any general lump-sum payment or retroactive general wage increase provided in any applicable agreement that became effective while Claimant was out of service; (3) overtime pay for lost overtime opportunities based on overtime for any position Claimant could have held during the time Claimant was removed from service or on overtime paid to any junior employee for work Claimant could have bid on and performed had Claimant not been removed from service; and (4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service and with all notations of the dismissal removed from all Carrier records."

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement, that this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

In August 2017, Claimant B. Howell was injured in an off-duty accident, and he was placed on sick leave. By letter dated January 4, 2019, Claimant was instructed to contact the Office of Administrative Services within ten days to either arrange to report for duty or to provide medical documentation substantiating his need for continued leave. Claimant telephoned a Medical Services representative on January 22, 2019, but he did not provide medical documentation. On February 26, 2019, Claimant was sent a second letter instructing him to provide the requested documentation within ten days, advising that failure to comply with those instructions may subject him to disciplinary action, but Claimant did not provide any documentation.

By notice dated April 26, 2019, Claimant was directed to attend a formal investigation to determine his responsibility, if any, in connection with failure to follow instructions issued to him by the Manager of Administrative Services on February 26, 2019 to provide Health Services with medical documentation to substantiate a need for continued leave. The hearing was held *in absentia* on May 15, 2019, with Claimant being ably represented by two Organization officials, after which Claimant was found to be guilty as charged, and by notice dated May 23, 2019, he was dismissed from service.

The Organization challenges the discipline assessment on both procedural and substantive grounds. It first contends that the Carrier failed to comply with the applicable agreement with respect to initiation of charges. It states that the System Discipline Rule, Rule 40, requires that an investigation will be held within thirty days of first knowledge of an alleged violation, but that the hearing held May 23, 2019 was outside those time limits. The Organization asserts that the hearing therefore was invalid, and it argues that the discipline should be overturned on that basis alone.

With respect to the merits, the Organization maintains that the discipline assessment was unwarranted, arguing that the Carrier failed to meet its burden of proof in connection with all of the charges. It further maintains that the discipline assessed is arbitrary and unwarranted. The Organization concludes that dismissal was not warranted, and that Claimant should be returned to service.

The Carrier, on the other hand, maintains that there is no reason to disturb the discipline assessment. It states that Claimant received a fair and impartial hearing, and it argues that the hearing was carried out within the bounds of the applicable agreement.

With respect to the merits, the Carrier maintains that the record contains substantial evidence to support the discipline assessed, stating that there is no question that Claimant was guilty of the charges levied. It asserts that the evidence establishes that Claimant failed to follow instructions to provide medical documentation to substantiate his need for additional leave. It states that multiple attempts were made to persuade Claimant to provide the necessary documentation, but that Claimant simply ignored those attempts and failed to protect his employment relationship.

With respect to the level of discipline imposed, the Carrier cites prior awards which have found that dismissal was warranted when employees refused to comply with instructions from proper authority. It states that it is well within its rights to terminate Claimant's employment here as well. The Carrier states that there are no mitigating circumstances which warrant modification of the discipline, and it asserts that dismissal is appropriate on this record.

We have carefully reviewed the record in this case and the parties' arguments, and we find no procedural barrier to our consideration of the merits. We find no indication that the Carrier was required to initiate disciplinary actions any sooner than it did or that the Carrier's actions in this case were contrary to the applicable agreement.


With respect to the merits, we find that the Carrier has provided sufficient evidence to establish that Claimant was in violation of the relevant rule and policy. The Carrier's burden in matters

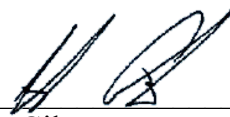
such as this is not proof beyond a reasonable doubt, but merely the production of substantial evidence to support the discipline assessment, which has been defined in prior awards as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.


Here, we believe that the evidence was such that a reasonable mind could accept the conclusion urged by the Carrier that Claimant failed to follow instructions to supply documentation to justify additional leave. We note that the record confirms Claimant was aware that the hearing was being held, but that he chose not to attend it, leaving the facts set forth above essentially undisputed. No valid reason for his failure to follow instructions has ever been put forth.

The next question before us concerns the level of discipline assessed. Prior awards have upheld similar discipline assessments in similar circumstances. To overturn the Carrier's assessment would require the Board to find that the Carrier acted arbitrarily or capriciously so as to constitute an abuse of discretion. On this record, we cannot find that the Carrier's actions were an abuse of discretion, so we will not substitute our judgment for the Carrier's now.

AWARD: Claim denied.


Michael D. Phillips
Chairman and Neutral Member


Adam Gilmour
Employee Member


Scott Goodspeed
Carrier Member

Dated: November 13, 2023