

SPECIAL BOARD OF ADJUSTMENT 1063

Case No. 234
Award No. 234

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

and

Norfolk Southern Railway Company
Norfolk and Western Railway Company, et al.

STATEMENT OF CLAIM:

Claim of Engineer S. A. McIntyre, Piedmont Division, Danville District, for pay for all time lost and entity removed from his personal record in connection with alleged insubordination, failure to comply with instructions, abandonment of assignment and alleged attempt to mark off under false pretenses on July 25, 1996 while serving as Engineer on Train PL24. Investigation conducted August 20, 1996. Article 31, Schedule Agreement.

OPINION OF BOARD:

On or about 10:45 p.m. on July 25, 1996, the General Yardmaster notified two pull-back jobs in Linwood Yard, North Carolina, that overtime would be necessary because of an accumulation of outlawed trains waiting to be programmed into the yard. The Claimant was assigned to PL24 and was in the process of completing his eight hour tour when the call came in from the General Yardmaster. According to the testimony of the General Yardmaster, the Claimant declined to work overtime, asserting he was not notified three hours in advance in accordance with the normal custom; furthermore he had been in a dentist chair before coming to work that day and his tooth had been bothering him throughout his regular tour, although he was committed to sticking it out. He stated he simply could not put in the overtime the way he felt. Claimant then departed the premises at his normal leaving time, although the General Yardmaster was persistent that Claimant should remain, since he had four hours remaining before the Hours of Service law would overtake him.

The Claimant was then notified of multiple charges dealing with the affair, including insubordination, failure to comply with instructions, abandonment of assignment and attempting to mark off under false pretenses. After a very testy trial, which we will comment on later, Claimant was assessed a suspension of sixty days. The claim was appealed in the usual manner without favorable resolution, so it is presented to this Board for

decision.

Our initial reaction to the trial transcript in this case was not favorable. We will refer to Awards 178 and 180 of this Board, both of which make the obvious point the Conducting Officers' primary purpose is to elicit facts germane to the charges, without bias or intimidation. He does not have the function of a prosecuting attorney, but must accord each witness the dignity and respect they deserve. When or if the witness becomes recalcitrant and difficult to handle, as Claimant was at times in this case, it requires a calm demeanor to restore a healthy dialogue during the interrogation.

Our analysis of the numerous charges pressed against the Claimant, which we have taken the liberty to set out earlier, suggest a very vindictive reaction to Claimant's adamant refusal to work overtime and his turgid reasons, including his reliance on the doctor's excuse for periodontal work. Normally, we do not pardon a cavalier rejection of work opportunities, particularly where the Carrier's officers are themselves working under stressful pressures, as the General yardmaster was in this case; however the Claimant had worked his assignment with some pain, if we are to believe his story, and that would seem to be sufficient.

We believe there were extensive mitigating circumstances in this case, furthermore, the charges and discipline were out of proportion to the Claimant's alleged delinquent behavior, so we will reduce the discipline to a reprimand and award him compensation for the time suspended. Our award in this case does not countenance Claimant's arbitrary refusal to work overtime where the proper ground work is laid.

FINDINGS: The Agreement was violated.

AWARD: Claim sustained in accordance with the Opinion.

ORDER: The Carrier will place the Award into effect within thirty (30) days of the effective date.

Dated at Norfolk, Virginia, this 27th day of February, 1998.

W. F. Euker
W. F. Euker, Neutral Member

K. J. O'Brien
K. J. O'Brien, Carrier Member

P. T. Sorrow
P. T. Sorrow, Organization Member