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NATIONAL RAILROAD **ADJUSTMENT** BOARD

**THIRD DIVISION**

Award Number 24664  
Docket Number MW-24788

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(  
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of **Trackman** M.P. Curry for alleged \*violation of Safety Rule 16 of the Book of Safety Rules, also conduct unbecoming an **employee** and subjecting the Company to undue criticism and loss of good will" was **without** just and sufficient cause and on the basis of unproven charges (System File 37-SCL-81-16/12-39 (81-32) G).

(2) **Trackman** M.P. Curry shall be reinstated with seniority and all other rights unimpaired, his record be cleared of the charges **levelled** against him and he shall be compensated **for** all wage loss suffered.

OPINION OF BOARD: Claimant was employed by the Carrier as a **trackman** at **Cordele, Ga., under** Section Foreman J. R. Keene, with **about** nine years of service. On March 12, 1981, he was notified by the Roadmaster:

"On March 3, 1981, you incurred a personal injury while working in the vicinity of Vienna, GA. You were taken to company doctor at Crisp County **Hospital** for examination and treatment. The medical personnel detected odor of alcohol on your breath and were requested to give you a **blood** test, which revealed an **alcohol** count of 86.6.

As result of the above incident you are hereby charged wftth violation of Safety Rule 16 reading as follows: '**Employees** on duty must not use or **be** under the influence of intoxicants, drugs or anything which may impair senses **or** alertness'. Also, you are charged with conduct unbecoming of an employee and subjecting the company to undue criticism and loss of good will.

A hearing will be conducted in the **Trainmaster's** office, **Cordele, Ga.**, on March 20, 1981, at **10:00 A.M.**, at which time you will be present to answer the charges.

You may be represented by the duly accredited representative of the employees and may have present any witnesses who have knowledge of this incident. It will be your responsibility to arrange for the presence of your witnesses. Your personal record will be subject to review in the hearing."

On March 19, 1981, claimant was taken out of service, apparently as a result of the charges placed against him, after having been permitted to return to work on March 4, 1981. On April 2, 1981, the Division Engineer notified claimant of his dismissal, the letter of dismissal reading in part:

"A review of the transcript of the hearing clearly reveals that Trainmaster **Renfro** and **Foreman Keene** smelled alcohol on your breath. Subsequent blood test, with your permission, was conducted and this too revealed a presence of alcohol in your blood.

Based on the above facts and circumstances, it is my decision that you be dismissed from the service of the Company effective Thursday, March 19, 1981, the date you were removed from service. Please turn in any company property that you have in your possession to **Roadmaster Bashlor.**"

A copy of the transcript of the investigation conducted on March 24, 1981, having been postponed from March 20, 1981, has been made a part of the record. In the investigation claimant's immediate foreman testified that claimant rode to work with him on the morning of March 3, 1981, at which time he considered claimant "as normal as always", that claimant performed work at the gang location for about **two** hours when he (the foreman) instructed him to take the truck **and** travel to Vienna, Ga., some six or seven miles, to get a barrel of fuel oil; that if he did not consider claimant normal at the time he would **not** have sent him in the truck.

**While attempting**, with the assistance of another **employee**, to load the partial **barrel** of fuel oil at Vienna, claimant suffered an injury to his leg, about 10:00 or **10:30** A.N. at which time he was taken to Crisp **County** Hospital at **Cordele** for possible treatment of the leg injury.

When the Trainmaster heard of the injury and of claimant being taken to the hospital, he proceeded to the hospital and later met claimant's **foreman** there. The Trainmaster testified in the investigation that one of the nurses at the hospital made a remark to him about claimant appearing to be under the influence of intoxicants; that he checked with two other nurses and they also indicated that they detected the odor of alcohol on claimant. The **Trainmaster** stated that he also detected alcohol on claimant. Arrangements **were** then made, with the claimant's consent, for a blood alcohol test. The results of the blood test were obtained the next day, at which time the **Trainmaster** was informed by the doctor that the blood test showed 0.08 and that 0.1 was the scale that **would** indicate legal intoxication. The doctor did indicate that claimant had an alcohol content in his system, although it was slightly below the 0.1 figure, which would indicate legal intoxication. The foreman testified that when he talked to claimant at the hospital, he detected the odor of alcohol.

In the investigation claimant stated that he had consumed a rather unusual amount of intoxicants over the prior weekend and the night before reporting for duty on March 3, 1981. He went on to state that in his conversation with the doctor at the hospital, the doctor stated in part:

"...well you had to be going through a lot of bottles for it to be in you like **that.**"

Even though the blood alcohol test did not show claimant to be legally drunk, it did show that he had alcohol in **his** system. We find that there was substantial evidence in the investigation to justify the conclusion that claimant was under the influence of intoxicants in violation of General Rule 16 of Carrier's Safety Rules for Engineering and Maintenance of Way Employees, which reads:

**"16.** Employees on duty must not use **or** be under the influence of intoxicants, drugs or anything which may impair senses or alertness.'

However, we find nothing in the investigation to support carrier's contention on the property and before this Board that Claimant's condition **"was** a contributing factor to the personal injury he sustained while on duty.' This may be an accurate assumption, but discipline must be based on evidence adduced at the investigation - not on assumptions, **speculations** or conjectures. In this connection we consider it noticeable by its absence, that no statement was taken from the employe who was assisting claimant in loading the fuel oil at Vienna when he was injured. We also take particular note of the testimony of the **foreman** as to claimant's condition before he sent him to Vienna. Certainly the employe who was assisting claimant in loading the fuel oil at Vienna was **knowledgable** as to what happened and **would** be considered a material witness. Neither do we find anything in the investigation that claimant's actions subjected the Carrier to undue criticism **and** loss of good will. We have upheld charges of this nature where it was established by evidence that the incident involved resulted in unfavorable publicity.

Claimant's personal record was made a part of the investigation. It shows that he entered service on January 19, 1972, and there **is no** indication of prior discipline. The **foreman** testified that he had had no prior problems with claimant. **"...I've** been knowing him a long time and I've never known him to drink on the **job."**

Based upon the record before the Board, we find that discipline was warranted, but that permanent dismissal was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of service.

**FINDINGS:** The Third Division of the Adjustment Board, **upon** the whole record and all the evidence, finds and holds:

**That** the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

**That** this Division of the Adjustment Board has jurisdiction over the dispute **involved** herein; and

That the discipline was excessive.

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Claim sustained in accordance with the Opinion.

NATIONAL ~~RAILROAD~~ ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984

