

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Burlington Northern Railroad Company

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

(1) The dismissal of Trackman D. A. Johnson for alleged violation of Safety Rule 565 on April 18, 1986 was arbitrary, capricious and on the basis of unproven charges (System File BN-86-13).

(2) The claimant's record shall be cleared of the charge leveled against him, he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The facts of this case are not in dispute. Claimant acknowledged to his Roadmaster that he had been drinking beer prior to a meeting on Company property on April 18, 1986. Claimant was on a medical leave of absence. After being withheld from service, Claimant took a blood test that showed no alcohol in his blood. Following an investigation, Claimant was dismissed from Carrier's service.

Claimant was offered reinstatement on a leniency basis without pay for time lost on November 17, 1986. Claimant rejected the offer.

From a review of the record, we must conclude that given the smell of alcohol on Claimant's person, as well as his admission that he had drunk beer prior to coming on the property, the Roadmaster had ample basis for concluding that Claimant was likely to have a blood alcohol content greater than 0.0 percent. This is true even though Claimant tested negative several hours later.

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Claimant was offered a return to work on a leniency basis, contingent on his passing a physical examination and his meeting with a Social Counselor. Claimant would have been well-advised to have accepted this offer in 1986.


Given all the facts of this case, we shall return Claimant to work under the same conditions outlined in Carrier's offer of November 17, 1986.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of March 1989.