

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25628

Docket Number MW-25941

John W. Gaines, Referee

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

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

"1. The dismissal of Welder Helper D. Shipman for alleged violation of Rule 'G' was arbitrary, capricious, unwarranted and on basis of unproven charges (System File C-5-83).

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

OPINION OF BOARD: Allegedly violated was the prohibition as set out in Maintenance of Way Rule "G":

"...Employees must not report for duty under the influence of any alcoholic beverage, intoxicant, narcotic, marijuana or other controlled substance, or medication, including those prescribed by a Doctor, that may in any way adversely affect their alertness, coordination, reaction, response or safety."

Carrier's decision to dismiss Claimant followed a formal hearing at which Claimant testified in his own behalf and Carrier introduced documentary evidence including a hospital blood test report and had two Roadmasters testify in Carrier's cause. Claimant's service record was considered on the property.

The decision of dismissal for violation as found, was set forth in Carrier's letter to Claimant dated April 14, 1983. Up to that time Claimant was being held out of service, pending investigation.

We do not go on this record condoning alcoholic usage in any amounts such that there can be a measurable blood alcohol level in the worker when he reports for duty. Nor do we discourage the Carrier from erring on the side of safety when Carrier sensed some likelihood that the worker was reporting for work partially intoxicated. Guilt, in instances where it can be found, of being under the influence when subject to duty constitutes a most serious offense in the vital matter of railway safety.

We find just and sufficient cause to warrant Carrier in the present instance to take the precautions it has taken in the interests of extreme vigilance as to safety, notwithstanding the inevitable result of this instance whereby Claimant has been held out of service for the period. There were reasonable and justifiable doubts raised in the matter by the fact of the two

Roadmasterstestifying alike that each had smelled alcohol on Claimant's breath, and by the chemically determined fact of the blood alcohol test yielding a positive reading that he had consumed alcohol. As a consideration which was brought out from the service record aforementioned, Claimant was noted to have lost seven months' time in 1980-1981; he had received severe discipline for infractions of other sorts, resulting in dismissal and, later, reinstatement on basis of leniency but without pay for the time lost in 1980-1981.

The testimony of the Roadmasters and the confirming report of the blood alcohol test constituted substantial evidence that Claimant had, to say the least, consumed alcohol prior to reporting for work.

Based upon the record before the Board, we find that discipline was warranted, but that permanent dismissal was excessive. Claimant has accumulated nine years in time of service and, in that time, has qualified for and received promotions as noted in his record.

We will award that Claimant be reinstated with seniority and all other rights unimpaired. However, we will not award any compensation for time Claimant may have lost while out of service.

The Organization's position as to time limits is not well taken in connection with the above specified date of Carrier's dismissal letter. The point appears to have been dropped in the final submissions.

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.

Award Number 25628  
Docket Number MW-25941

Page 3

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985.