

The Third Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(Canadian Pacific Limited

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

(1) The dismissal of Messrs. A. G. Coro, A. G. Achey, D. L. Achey, T. Giroux, R. J. Poulin, G. L. Lacasse, L. C. Talpey and M. J. Page for alleged violation of Rule 'G' on July 25, 1986 was without just and sufficient cause and on the basis of unproven charges (System File AT-736/011.36).

(2) The claim* as presented by General Chairman G. Valence on September 4, 1986 to Roadmaster R. A. Goss shall be allowed as presented because the claim was not disallowed by him in accordance with Rule 18.2.

* The initial letter of claim will be reproduced within our initial submission.

(3) As a consequence of the violations referred to in Parts (1) and/or (2) above the claimants shall be reinstated to service with seniority and all rights unimpaired and/or their records cleared of the charges leveled against them and they shall be compensated for all wage loss suffered, if any."

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.

In this case the Claimants were dismissed for their participation in an incident involving working under the influence of alcohol. On July 25, 1986, the Claimants, who were members of the Rail Gang, were assigned to perform track maintenance work in the vicinity of Keough, Maine. They broke for

lunch, which they ate at the nearby "camp" of one of the Claimants, A. G. Achey, who was due to retire within a week. Part of this camp is on land leased from the Carrier by Claimant Achey.

The details of what transpired at this lunch are under dispute. The Carrier contends that each of the Claimants either was drinking alcohol or failed to report that the other Claimants were drinking. The Carrier also charges that one of the Claimants provided false and misleading information at the initial Carrier Investigation into the incident.

The Claimants admit that they remained at the camp from approximately 1200 until 1430, although they finished with lunch at about 1230. After the get-together they traveled via Carrier equipment to the worksite at Jackman, Maine, about seven miles away.

The Carrier's witnesses reported that when the Claimants arrived at the Jackman, Maine, station two of them, D.L. Achey and M. Page, engaged in abusive or reckless behavior and appeared to be under the influence of alcohol. Their behavior was reported to management, and the entire gang, as well as Assistant Roadmaster Poulin, were removed from service on July 29, 1986, pending further Investigation.

The Carrier conducted its Investigation and on August 27, 1986, removed all of the Claimants from service for violating Rule G of the Maintenance of Way Rules & Instructions, which reads as follows,

"The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited."

Claimant LaCasse also was charged with failing to promptly report a violation of Rule G and for providing false and misleading information at a Company Investigation on July 31, 1989. Claimants D.L. Achey and M.J. Page also were found guilty of conduct unbecoming an employee for their behavior at Jackman, Maine, on the date in question.

The Organization filed a Claim dated September 4, 1986, on behalf of the employees dismissed as a result of the July 25, 1986, incident. The Carrier conducted an appeal Hearing several weeks later, but refused to reinstate the Claimants. The parties could not settle the matter and it proceeded to this forum for resolution.

As a preliminary matter, the Organization contends that the Claim should be allowed because the Carrier failed to respond to it within sixty (60) days from the date the Claim was filed. The Board concludes, however, that this issue is without merit.

As for the merits of the dispute, the Board has carefully considered the statements of the employees involved and the transcript of the appeal and concludes that the discipline imposed by the Carrier was too severe, except in the case of D.L. Achey and M.J. Page. Therefore the rest of the Claimants will be offered reinstatement, except for D.L. Achey and M.J. Page, and A.G. Achey, who retired shortly after his dismissal.

The Board concludes that the conduct of D.L. Achey and M.J. Page was so outrageous that they should not be offered reinstatement, for the following reasons. First, both men admitted that they drank beer while on duty operating Carrier equipment to travel from Keough to Jackman, Maine, after their lunch break. In contrast, there is no evidence that the other employees drank any alcohol once they left the lunch site or while they were working.

Second, the admission of these two Claimants that they drank alcohol after leaving the lunch site strongly suggests that they drank alcohol at the lunch site as well. In contrast, the evidence against the other Claimants regarding alcohol use at the lunch site is not supported by admissions from any of them that they drank alcohol while on duty.

Third, the behavior of these two Claimants at Jackman, Maine, as reported by several witnesses, indicated strongly that not only had they been drinking alcohol, but also that their ability to function in their jobs had been impaired by the alcohol use. For example, D.L. Achey admitted that he gave rides to his son and several other children in Carrier equipment, while on duty. According to the Foreman at Jackman this Claimant also had trouble getting over the railroad crossing with his equipment, backed into a couple of barrels while removing a pushcar from a track, and fell onto a motor car when he came down from another piece of equipment. There was also convincing evidence that he spoke abusively to several Supervisors and other employees.

The evidence against Claimant Page also demonstrates unusual behavior following the lunch. There was evidence that he spoke abusively and when he came up to the Foreman to apologize for his behavior he stepped on the hi-rail wheel, causing the wheel on the other side of the axle to contact the Operator's car. This evidence, combined with his own admission that he was drinking while operating Carrier equipment, however, is sufficient to justify his dismissal.

The Organization argues that because no accidents occurred at the job site as a result of the alleged alcohol consumption no discipline should have been assessed. However, given the evidence that both Claimants Achey and Page suffered from impaired judgment and motor abilities, the fact that no accident actually occurred was more a matter of chance, or intervention rather than the result of sound judgment or a compliance with even minimal safety standards. Foreman Prince stated that at the time Claimant Achey was giving rides to the children on the speedswing he was heading for the main street until he was intercepted by the Foreman and Claimant Coro. The Board need hardly comment on how serious would have been the results if there had been an accident with the children riding in a Carrier vehicle.

Claimant A.G. Achey has retired, and therefore reinstatement is not appropriate for him. The other five Claimants will be offered reinstatement, on the grounds that the discipline imposed was too severe, given their past good records and the lack of evidence that they were impaired at the job site. However, the Board concludes that backpay is not appropriate in this case, given the substantial evidence that the Claimants were involved either in drinking alcohol or in failing to report that other employees returned to work after drinking alcohol. The conduct in which the Claimants participated is extremely dangerous, particularly in an industry in which extreme caution is warranted, in order to prevent injuries to oneself, fellow co-workers and the public.

Claimants A.G. Coro, T. Giroux, R.J. Poulin, G.L. LaCasse, and L.C. Talpey are to be reinstated with full seniority and all other rights unimpaired but without backpay.

Claimants A.G. Achey, D.L. Achey and M.J. Page will not be reinstated, for the reasons stated above.

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 28th day of November 1989.