

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43885
Docket No. SG-45295
20-3-NRAB-00003-190028**

The Third Division consisted of the regular members and in addition Referee Patricia T. Bittel when award was rendered.

PARTIES TO DISPUTE: (
(Brotherhood of Railroad Signalmen
(BNSF Railway Company

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the BNSF Railway Company:

Claim on behalf of C.J. Shoemaker, for reinstatement to service with compensation for all time lost, including overtime pay, with all rights and benefits unimpaired, and with any mention of this matter removed from his personal record, account Carrier violated the current Signalmen's Agreement, particularly Rule 54, when it issued the harsh and excessive discipline of dismissal against the Claimant, without providing a fair and impartial Investigation and without meeting its burden of proving the charges in connection with an Investigation held on August 22, 2017. Carrier's File No. 35-17-0037. General Chairman's File No. 17-064-BNSF-129- SP. BRS File Case No. 15879-BNSF. NMB Code No.16.”

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 employee 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 were given due notice of hearing thereon.

On Friday, August 12, 2017 at approximately 3:00 PM, Signal Foreman Barry Horn and the Claimant finished their work week in Claremore. Instead of going home, they stayed in Claremore, and later that evening drove BNSF company vehicle 25683 to Buffalo Wild Wings. The Claimant acknowledged consuming five beers in five hours. At approximately 1:02 AM in the morning, Horn and the Claimant got back into the company vehicle to return to their motel. While in route, Horn drove the vehicle into a ditch.

Claremore Police Officers responded to the call and confirmed that the Claimant and Horn had both been drinking and that Horn was driving at the time of the accident. Horn was arrested and charged with driving under the influence; the Claimant was arrested for public intoxication. After investigation, the Carrier determined that the Claimant had violated the BNSF Policy, Rules, and Procedures on the use of Alcohol and Drugs as well.

The Carrier notes there is no doubt that the Claimant had alcohol in his system. It points to Rule 1.6 Conduct and contends that getting into a vehicle with an intoxicated person violates the obligation to protect the safety of self or others. It argues the Company Policy on Drugs and Alcohol was violated as well conscious or reckless indifference to safety.

The Organization counters that the Claimant was not on duty, was not on BNSF property, and was not being paid at the time of the accident. In the Organization's view, his being only a passenger in the vehicle is a critical mitigating circumstance which the Carrier failed to consider. It notes that Rule 1.5 only applies while the employee is on Company property. Though he was charged with public intoxication, the Organization insists this charge was under challenge at the time of the record, the Carrier cannot rely on unproven charges as evidence. In its assessment, the discipline was excessive and harsh in view of the Claimant's discipline-free record.

The Company Policy on Use of Alcohol and Drugs states as follows in pertinent part:

“II. Purpose

This Policy establishes how BNSF Railway maintains its commitment to an alcohol and drug free working place, including rules for identifying and correcting Alcohol and Drug use in the work place. * * *

IV. Policy Requirements

- A. While on BNSF Railway property, on duty, or operating BNSF work equipment, no employee may: * * ***
- 5. Report for duty or remain on duty or on BNSF Railway property when his or her ability to work safely is impaired by Alcohol, Controlled Substances or illegally Drugs.**

MOWOR 1.5 Drugs and Alcohol

The use or possession of alcoholic beverages while on duty or on company property is prohibited. Employees must not have any measurable alcohol on their breath or in their bodily fluids when reporting for duty, while on duty or while on company property.

The use or possession of intoxicants, over the counter or prescription drugs, narcotics, controlled substances or medication that may adversely affect safe performance while on duty or on Company property, except medication that is permitted by a medical practitioner and used as prescribed. Employees must not have any prohibited substances in their bodily fluids when reporting for duty, while on duty or while on Company property.

MOWOR 1.6 Conduct

Employees must not be:

- 1. Careless of the safety of themselves or others.**
- 2. Negligent. * * ***

Any act of hostility, misconduct or willful disregard of negligence affecting the interest of the Company or its employees is cause for dismissal and

must be reported Indifference to duty or to the performance of duty will not be tolerated.”

The Carrier’s rules on alcohol and drug abuse are narrowly constrained to situations where the employee is “reporting for duty, on duty or on Company property.” None of these apply to the fact pattern presented. However, it is clear to this Board that getting into a Company vehicle and with an intoxicated person at the wheel is a clear breach of safety standards. Without doubt, it is undeniable carelessness regarding one’s own safety as well as that of the intoxicated driver to jump in and go. As such, we find the Claimant in violation of MOWOR 1.6. The risk to Company property only compounds the matter.

This decision does not turn on drinking by the Claimant himself, since the charge of public intoxication was only a charge, insufficient to constitute proof regarding his actual state, and since all rules addressing his drinking are inapplicable. That said, we view the Claimant’s breach of the rule against carelessness and negligence as egregious. He knew how much Horn had been drinking because he had been with him the entire evening. He knew the vehicle belonged to the Company and shared responsibility for its protection. But more grievously, he knew he was not only placing himself in danger but also allowing Horn to place himself in danger as well. Even so, he willingly accepted and participated in the danger by getting inside the vehicle. The Carrier has met its burden of proof.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of January 2020.