

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44379
Docket No. MW-45773
21-3-NRAB-00003-200086**

The Third Division consisted of the regular members and in addition Referee Richard K. Hanft when award was rendered.

**(Brotherhood of Maintenance of Way Employes Division
(IBT Rail Conference**

PARTIES TO DISPUTE:

(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. D. Carter, by letter dated July 5, 2018, for alleged violation of GCOR Rule 1.5, Drugs and Alcohol and BRC's Drug and Alcohol Policy for allegedly reporting to work with alcohol in his system and failing a U.S. Department of Transportation Random Urine and Breath Drug and Alcohol Test on May 29, 2018 was excessive, unduly harsh and constituted a violation of the Agreement (System File RI - 1849B-801 BRC).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Carter shall be returned to service and ‘... made whole by compensating him for all wage and benefit loss suffered by him for his employment termination excluding outside earnings, any and all expenses incurred or lost all seniority fully restored, and the alleged charge(s) be expunged from his personal record. Claimant must also be made whole for any and all loss of retirement month credit and any other loss.’”**

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.

This dispute concerns an employee who entered the Carrier's service on May 3, 1999 as a trackman and had more than nineteen (19) years of unblemished service when, at the 6:30 A.M. start of his shift on Tuesday, May 29, 2018 he was randomly selected to take a U.S. Department of Transportation alcohol and drug screen.

It is undisputed that the results of the test performed at 6:36 A.M. showed a Blood Alcohol Content ("BAC") of .031g/ml and a second breath test administered seventeen minutes later at 6:53 A.M. yielded a result of .024g/ml. Under D.O.T. regulations the Claimant could not work with a BAC of .02 or greater. The Breathalyzer Machine used to perform the tests was checked for proper calibration at 6:59 and was reported to be "O.K."

The General Code of Operating Rules 1.5 provides:

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

The Claimant was taken out of service and participated in a formal investigation held on June 28, 2018. The Claimant's dismissal as a result of his violation of Carrier's Alcohol and Drug Use Policy and GCOR 1.5 was reaffirmed on July 5, 2018.

The Organization asserts in its submission to this Board that Carrier failed to meet its burden of proof. The Organization avers that while the Claimant admittedly drank beer the night before the breathalyzer test was administered, that the Claimant ceased drinking at least 11 hrs. before reporting for duty. Given the scientific certainty that the beer he drank would not have been at a measurable level by the

time he reported for work, the Claimant, the Organization argues, reasonably believed that he did not have alcohol in his system.

Moreover, the Organization contends, Carrier offers no evidence to dispute that the Claimant quit drinking at least 11 hours prior to testing and submits that it is completely uncontested that Claimant could not have had any measurable alcohol in his system.

The Board has reviewed the record carefully. The Claimant's own testimony at the proceeding held on the property refutes the Organization's arguments. While the Organization insists the Claimant ceased drinking at least eleven (11) hours prior to his 6:30 A.M. scheduled shift start, which would have been 7:30 P.M., and that Carrier offered no evidence to refute that fact, the Claimant testified that he quit drinking "between 8:00 and 9:00 P.M."

Moreover, while the Organization submits that the Claimant could not have had any measurable alcohol in his system, the Claimant testified at the Investigation on the property:

Q: "Do you acknowledge that you had alcohol in your system when you reported for duty?
A: Yeah, the Breathalyzer don't lie."

The Claimant further testified that "If I would have thought that I would have put my life, my co-workers or the Belt Railroad in jeopardy I would not have come to work, but I have to admit that it did happen, I am guilty of it, and I just made a mistake. It was totally my fault..."

The Board thus finds that the Carrier proved the charge by substantial evidence. Nevertheless, the Organization contends that dismissal is an excessive punishment given the Claimant's past service record and must meet the Just Cause standards.

Just cause is a term of art and consists of a number of substantive and procedural elements. Primary among its substantive elements is the existence of sufficient proof that the employee engaged in the conduct for which he or she was discharged. That finding has already been determined above.

Other elements of Just Cause include a requirement that an employee know or reasonably expect to know ahead of time that engaging in a behavior will likely

result in discharge. Here, the Hearing Officer directly asked the Claimant if he understood the rules that he was accused of violating to which the Claimant answered affirmatively.

Just Cause further requires the existence of a reasonable relationship between an employee's misconduct and the punishment imposed and a requirement that discipline be administered even-handedly, that is, that similarly situated employees be treated similarly and disparate treatment be avoided.

Arbitral precedence shown in the Carrier' submission to the Board shows that the Carrier has consistently been upheld in dismissing employees found in violation of its Alcohol and Drug Use Policy and GCOR 1.5 since at least 1996. The Belt Railroad Company has steadfastly maintained a "Zero-Tolerance" Policy relative to alcohol and drug use on the property or while on duty. The Claimant testified that he was aware of the rule. We find no evidence that Carrier treated any similarly situated employee less severely than the Claimant.

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 13th day of April 2021.