

PUBLIC LAW BOARD NO. 1975

Award No. 16
Case No. 16

PARTIES TO DISPUTE: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)

STATEMENT OF CLAIM:

1. That the Carrier violated the Agreement when, on September 30, 1976, it suspended Mr. C.L. Enox, Welder, and Mr. J.A. Sanchez, Welder's Helper, from the service of the Carrier and further violated said Agreement when on October 27, 1976 it dismissed Claimants without first giving Claimants a fair and impartial hearing and on charges not sustained by the hearing record; said action being arbitrary, excessive and in abuse of discretion.

2. That Claimants now be reinstated to the service of the Carrier with seniority and all other rights restored and that they be compensated for all wage loss suffered as a result of wrongful dismissal.

STATEMENT OF FACTS: This case involves two Claimants. The first C.L. Enox has been employed by Carrier as a Welder since February 8, 1972. The second J.A. Sanchez has been employed by Carrier as a Welder's Helper since June 21, 1971. In some respects the particular facts and circumstances vary as to each Claimant. Basically however, the facts overall apply to

both in rather similar fashion and therefore the case itself, the issues involved, and the discussion of the applicable principles and discipline will be considered equally as to both Claimants. It does not appear from the record, as to each Claimant, that during the respective periods of their employment there had been any infractions or violations of Agreement or Rules filed against either of them. Up to this point, therefore, the records of each are clear of such infractions.

The important date in this case is September 30, 1976. On that day both Claimants were performing their tour of duty and had within their possession and control a truck belonging to Carrier. It appears that they experienced mechanical difficulties with the truck at about 4 p.m. of that afternoon. This problem occurred near the end of their shift (4 p.m.) at the intersection of 14th and Peralta Street in Oakland, California. According to the record Enox entered a Church, located in the area, to call Carrier to advise as to the disability of the truck. It appears that during his stay at the Church he had an altercation with one or two ladies about some minor matter involving the placing of a coin in the telephone box for the purpose of making the call.

The occurrence itself, as appears obvious, was minor but nevertheless caused one of the ladies to call Carrier's offices and report the incident. This caused certain of

Carrier's officials to immediately come to the scene where the altercation was occurring and interrogate those involved. Their interrogation, which included of course Enox and Sanchez, appeared to be of such nature as to lead them to the conclusion that both Claimants were under the influence of alcoholic beverages which they had consumed during their tour of duty on September 30, 1976. Considering this a clear violation of Rule G, the officials present advised the Claimants that they were suspended from their tour of duty pending investigation.

A formal hearing was held on October 12, 1976 and, as a result of the evidence at that hearing, both Claimants were advised by letter of Division Engineer O'Callaghan that they had been dismissed from service on October 27, 1976.

Thereafter the Organization and the Claimants submitted appeal procedures pursuant to the Agreement, which in each case was rejected by Carrier.

The specific facts bearing directly upon the pertinent issues of this dispute will be gone into detail shortly hereafter. Suffice it to say at this point that the position of the Organization consisted of the contentions that the Claimants had not received a fair and impartial hearing as required by the Rules; that the Claimants were "not on duty" and were not being compensated at the time the alleged violations occurred; that evidence and certain statements admitted into evidence at the formal hearing were improper

and; finally, that the discipline of dismissal imposed by Carrier upon both Claimants was exceedingly excessive.

It is the position of the Carrier, conversely, that the formal hearing was fairly and impartially conducted; that the Claimants were given every opportunity to present their versions of what had occurred; that both were represented by officials of the Organization; and that the evidence adduced at the hearing was more than sufficient to find them guilty of having violated Rule G of Carrier's General Rules and Regulations. Accordingly, Carrier contends the discipline of dismissal imposed here as to each Claimant was proper and fully warranted.

Rule G reads precisely as follows:

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

The detailed facts, as they appear in the record, are that Claimants were working at their assigned positions when, at about 3:55 p.m. on September 30, the truck assigned to them became inoperative at a point in Oakland which has been previously designated. Claimant Sanchez remained in the truck and Enox went to look for a telephone booth so that he could call Carrier and inform the appropriate officials what had occurred. It appears that the closest pay telephone booth was in a nearby Church, and it is at this point that we have an incident with one or two church ladies about the

use of a "slug" instead of a coin with which to call Carrier. Enox denies that this is true.

The incident itself is unimportant except that it brought the officials of Carrier onto the scene. They arrived at about 4:30 p.m., consisting of Supervisor Miller and Track Supervisor Dutra. As the record shows they met Sanchez, who was walking towards his headquarters point six blocks away "to catch a City bus to go home". They stopped him and interrogated him as to what had occurred. This was done in their automobile. During and after they had completed their interrogation, it appears from their examination and observations that they concluded that he had violated Rule G. Specifically, it appears that they concluded that Sanchez was intoxicated, and they suspended him from duty pending formal hearing. This occurred at about 4:55 p.m. which was close to one hour after the quitting time of Sanchez. Sanchez was then returned to headquarters for additional interrogation.

Supervisor Miller returned to the initial scene, where the truck was still disabled, where he came upon Enox who was using the telephone in another location and speaking to a Carrier official in San Francisco. Miller accompanied Enox back to the truck where they met Supervisor Hall. Based upon Mr. Hall's interrogation and observations of Claimant Enox's conduct and speech, Mr. Hall advised Enox he was being removed from service pending investigation because

of alleged violation of Rule G. Enox reacted rather unpleasantly. However, he was driven back by Miller to headquarters where the matter was pursued further. It appears at this point that Mr. Hall, during his questioning of Enox, became further convinced that Enox was under the influence of intoxicating liquors in violation of Rule G and this reinforced his suspending Enox from service pending investigation.

The conclusions reached by Carrier officials Miller, Hall, Dutra and Carrier Police Officer Dabney that both Enox and Sanchez were "under the influence" and in violation of Rule G were not merely based on non-factual conclusions. Specific items of fact and substance supported these factual observations and conclusions. In the first instance, the fact that Sanchez admitted at headquarters, and admitted earlier to Supervisors Miller and Dutra when they appeared at the truck scene, that both he (Sanchez) and Enox had been drinking during the day. Additionally, various other obviously observable symptoms evidenced a state of intoxication as to both Sanchez and Enox. The testimony established that both were unsteady on their feet, their voices were slurred when they spoke, they both had odors of intoxicating liquors on their breath, their eyes were bloodshot and their faces were flushed. Additionally, each was rather incoherent in his attempts to explain certain of the incidents that had occurred.

Nevertheless, in spite of this, Sanchez was "capable" of walking back to headquarters taking a bus and going home by himself. Also, Enox after all this had occurred, after the interrogation had been completed, was "capable" of picking up his car and driving home alone.

The basic testimony as to Carrier was given by Assistant Division Engineer Hall, Water Service Supervisor Miller, Track Supervisor Dutra and Southern Pacific Police Officer Dabney. Although their overall testimony varied in certain minor details, their specific testimony corroborated each other as to the factual evidence that they had observed as to the respective states of intoxication in which they found both Enox and Sanchez to be for at least the period from approximately 4 o'clock to 5 o'clock on September 30, 1976, the date on which all this occurred.

We are not here analysing all the testimony in detail as presented by Carrier, (which was in some cases, but not all, denied by Enox and Sanchez), because the evidence supports the factual conclusion that there is sufficient conclusive testimony and admissions by both Claimants to indicate that both Enox and Sanchez had violated Rule G during the course of their day's work on September 30. In fact Enox also admitted to drinking one beer between the hours of 4 and 5 p.m. on that day. Moreover, he was offered several

opportunities to submit to a test of his blood alcohol content but refused on the basis that he had been drinking earlier in the day until 1 or 1:30 a.m. and had consumed 1/4 of a pint of a bottle of vodka at approximately 7 a.m., one half hour before assuming duty. As previously stated, Sanchez had admitted that both he and Enox had imbibed quantities of alcoholic beverages during the course of that day. He did not fix the amounts.

OPINION: There is one minor issue that requires discussion at the outset and that is whether or not Enox and Sanchez were on duty after 4 o'clock on the day in question, 4 o'clock being their quitting time. We find and rule as follows:

- (1) Where equipment of the Carrier is within the possession of the employes as part of the job, they are on duty until that possession is removed from their control either physically or by specific instructions to that effect by a Carrier official.
- (2) Where equipment is not in their possession but they are still on duty because their duties are overrunning their quitting time, they are still on working time until they have physically completed the assignment or have been orally released therefrom by instructions from a Carrier official.

Only in this manner can we maintain the necessary sense of responsibility that runs beyond the precise moment of quitting time. In this case, obviously, the retention of control of the disabled truck was within the possession of

Enox and Sanchez until Carrier officials were notified or other equipment arrived to remove the disabled truck. Until that point was reached, and in fact including the period of time of interrogation here involved, both Enox and Sanchez were on working time and entitled to compensation for overtime. The fact that they have not received such payment, as contended by the Organization, is not the problem of this dispute. It is a matter however that should be taken up between the principles and amicably resolved.

On the major issue before us, we are convinced by the evidence that both Enox and Sanchez have "drinking problems". There is sufficient in the factual recital contained above to indicate that this is true. It is not just a question of taking a nip or two; it is a question of serious and continuous drinking of intoxicating liquors.

Nevertheless, in spite of their respective conditions during the period in issue in this dispute, no harm occurred to any property or to any individuals. True, there was some altercation with a lady in a church. This was minor. There was no serious offense, there were no blows struck, there was no violence exhibited and both men seemed to have themselves comparatively under control even though they had imbibed quantities of alcoholic beverages.

As to the timing of the "imbibing", we would submit that it is physically impossible for one to be "under the influence of liquor" at 4 p.m. precisely and not to have

imbibed some alcoholic beverages prior to 4 p.m. To deny this statement is to beggar logic. Accordingly, we conclude and find that both Enox and Sanchez violated Rule G to the extent of imbibing alcoholic beverages while on duty and while subject to duty, in clear violation of the restrictive mandate of Rule G.

We repeat however that no substantial harm occurred, and thus, in this respect, the question of discipline becomes of extreme importance.

Innumerable cases of the various divisions of this Board, and in the field of Industrial Relations generally, have established and applied, in basic essence, certain specific principles in the assessment and imposition of appropriate penalties in discipline cases.

As, for example:

(1) That the penalty should be reasonably commensurate in punishment with the nature of the violation or infraction. On the latter account, the nature of the specific individual involved as transgressor should be taken into account to judge the measure of discipline and to see to it whether this may not have an effect on avoiding repetition of individual similar offenses in the future.

(2) The discipline must in no sense whatsoever be primarily punitive in nature under any circumstances.

(3) The discipline must be designed, at least to some extent by its impact upon others, towards avoidance of similar offenses by other employees.

(4) Whenever possible, and whenever warranted, the discipline imposed should be coupled with a positive program, medical and/or professional if necessary, for inculcation of remedial attitudes and their practical application on a sound work-a-day basis, towards improvement (or possible removal) of the condition involved.

As a general proposition, of course, discipline to have any chance of being really effective must be group inculcated regularly among those employes affected, from an educational and realistic point of view, towards establishing the purpose of the rule involved and its practical impact upon the employes, their job performance, their safety and the efficiency factors which are necessarily involved.

Easily available statistics have demonstrated conclusively during the past eight or nine years, at least, that the Federal Government and many of the individual States have demonstrated changes in their attitudes towards the problem of alcoholism and its abuses. In 1970, for example, Washington passed a remedial "Alcohol Abuse and Alcoholism Act", and many States have enacted laws removing drunkenness (but not drunken driving) from their criminal statutes.

Thus, in most States "Alcoholism" is no longer treated as a crime, but as a mental and physical condition requiring special treatment medically, requiring the establishment of local alcohol reception centers for "Detoxification" and "half way houses" for outpatient treatment. Immeasurable assistance has thus been rendered the alcoholic, mentally

and physically, has increased his earning ability and has affected favorably his general family situation.

Since 1971, the government spending program to combat alcoholism and assist local programs has risen from 70 million dollars to over 200 million dollars. A good portion of these sums are made available for State treatment, for State "half way houses" and rehabilitation centers. It is quite obvious that without substantial funding from the Federal Government to the States, these efforts would prove merely paper programs.

It is quite obvious, therefore, that the public has finally become aware not only that the problem is seriously National in scope, but that it is a treatable condition requiring personal dedication and devotion by those more fortunate for the benefit of those who are especially in need of recognition and assistance on a personal day to day level. It is estimated by those who are personally involved in these programs that through realistic and effective treatment from 1/2 to 2/3 of our "alcoholic victims" can recover or have their personal plights made livable. At the very least, we should make every effort to prevent this problem from becoming immeasurably worse.

It is with these constructive thoughts in mind that we have reached our conclusions on the nature of discipline to be imposed in each of these cases as to each Claimant.

DISCIPLINE

1. In view of the fact that both Claimants have served this Carrier without any prior offense, violation or infraction; and further in view of the fact that the conditions that existed on the day in question resulted in no damage or injury to property or individual; we direct that both Enox and Sanchez be reinstated to the jobs they held respectively at the time of suspension. Such reinstatement shall take place only when and as hereinafter set forth, without compensation for back pay of any nature whatsoever. In all other respects each of their claims are denied.

2. The conditions as to each Claimant upon which reinstatement is being granted are as follows:

That within a period of thirty days from the date of this award (unless mutually extended by the Principals) each Claimant shall submit himself voluntarily for treatment to a State or Federally funded public agency dealing with alcoholic problems, or with a privately funded agency within the means of each Claimant and within their personal financial limitation. During this period of 30 days each Claimant is placed on probation without compensation.

3. The reinstatement to which we have referred to in Paragraph "1" above shall not take effect until there shall have been submitted in the manner hereinafter designated a report by the Agency of treatment showing that satisfactory

progress and improvement has been made as to each Claimant.

4. Such regular reports as to satisfactory progress and improvement shall be made regularly every 30 days for a period of at least one year from the date of this award, which reports as to each Claimant shall be submitted each month to a Carrier officer designated for such specific purpose. They are to attend the sessions of such organizations regularly and report each month to a designated Carrier official. By designated we mean designated by the Carrier.

5. In the event such reports of satisfactory progress and improvement are not forthcoming as detailed above, or in the event that at any time within the period of one year from date of this Award, there is any repetition or any offense involving alcoholism or its effects, relating to or involving either of the Claimants, then the Claimant so charged, whether it shall be Enox or Sanchez, shall be subject to prompt suspension, prompt formal investigation and immediate dismissal in accordance with the Agreement and Rules of the Carrier and Organization.

6. Subsequent to the termination of the first 30 days from the date of this Award, and assuming the first report as required above shall have been properly rendered, compensation shall then be resumed as to each Claimant.

7. Finally, at the termination of the period of one year from the date of this Award, if all of the above has been complied with and there have been no incidents involving

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alcoholism as referred to in the record of this case or in this Award, which shall in any way relate to or involve either of Claimants, Claimants shall be restored to their seniority rights and shall again resume their rightful functions as regular employees of the Company.

AWARD: CLAIM PARTIALLY GRANTED SUBJECT TO SPECIFIC PROBATIONARY PERIOD AND SPECIFIC COMPLIANCE WITH ESTABLISHED CONDITIONS AND PROCEDURES IN ACCORDANCE WITH FOREGING FINDINGS.


LOUIS MORRIS, Neutral and Chairman


S.E. FLEMING, Organization Member


E.J. HALL, Carrier Member

Dated: San Francisco, California
March 17, 1978