

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Seaboard System Railroad, formerly L & N

STATEMENT
OF
CLAIM

1. The dismissal of R. I. Knott, Section Foreman, was without just and sufficient cause and was excessive.
2. Claimant shall now be restored to service with seniority and all other rights unimpaired and compensated for all wage loss.

FINDINGS:

The record clearly establishes that claimant, a section gang foreman, had been drinking an alcoholic beverage while on duty. He staggered as he left the company truck, his speech was slurred, a whisky bottle three quarters empty was observed in his right rear pocket and he admitted having a couple of drinks while at work. Without question, discipline is warranted in this situation.

On the basis of these facts, Carrier suspended claimant from service on February 8, 1984 pending investigation. It subsequently, after a hearing had been held in which claimant testified that

he had been drinking while on duty, decided to dismiss claimant from its service. In reaching that decision, Carrier took into consideration claimant's service record including his previous dismissals in April 1978 and May 12, 1983 for Rule G violations.

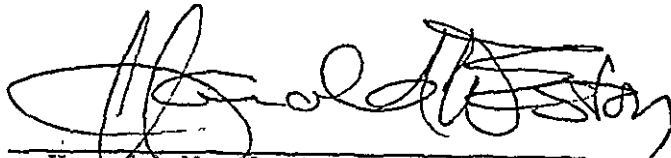
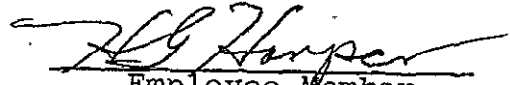
Petitioner points out that 2 hours and 20 minutes after claimant was removed from service on the date of the incident, he was called upon to repair a broken rail. It reasons that he must have been in good enough condition to perform the work and was in fact restored to service by Carrier's own action.

We do not agree that those circumstances were sufficient to constitute reinstatement. Carrier cannot validly be held responsible for the actions of a dispatcher who was unaware of claimant's suspension. Nevertheless, Petitioner's point is entitled to some consideration and in view of claimant's 38 years of service and forthright attitude, it is our conclusion that claimant should be reinstated to his former position with all rights unimpaired but without back pay for time lost. Reinstatement however, will be conditioned upon a recommendation from the Employee Assistance Counselor that he is ready to return to work. Unless that recommendation is made within eight months from the effective date of this Award, claimant will not be reinstated.

AWARD:

Claim sustained to the effect indicated in the last paragraph of the above findings. To be effective within 30 days from the date hereof.

Adopted at *Jacksonville, FL, November 6, 1985*


Harold M. Weston, Chairman
Carrier Member
Employee Member