

PUBLIC LAW BOARD NO. 2439

Award No. 67

Case No. 67

PARTIES
TO
DISPUTE

* Brotherhood of Maintenance of Way Employees
and
Southern Pacific Transportation Company (Western Lines)

STATEMENT
OF CLAIM

- "1. That the Carrier violated the provisions of the agreement when on July 6, 1982, it suspended Track Laborer R. E. Constante from service pending formal hearing for alleged violation of Carrier Rule 'G', and subsequently advised Mr. Constante in letter dated July 28, 1982, that he was in fact in violation of said rule and, for reasons thereof, he was thereby dismissed from the service of the Carrier, said action being excessive, unduly harsh and in abuse of discretion.
2. That R. E. Constante now be reinstated to his rightful position with seniority and all other rights restored unimpaired, compensated for all time lost herefrom, and that the charges placed on his personal record be expunged therefrom."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant herein had eleven years service with Carrier at the time that he was discharged. On July 6, 1982, claimant was observed by his Foreman having some difficulty in following instructions and maneuvering his truck on the labor gang he was assigned to. Further, the Foreman saw claimant throw a can of beer out of the truck into the bushes. He retrieved the can which was still cool. Subsequently, claimant was taken to the hospital for blood tests and the results of the blood tests indicated that his blood content contained .19% volume of alcohol. .1% alcohol is conclusive in the State of Arizona that a person is under the influence of alcohol. Claimant was removed from service pending a formal hearing. Following a formal hearing, claimant was dismissed from service by letter dated July 28, 1982.

Carrier notes that claimant was not only guilty of the charges herein, but this was not the first time that he was guilty of the same infraction. In Award No. 15

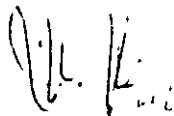
of this Board, dated July 21, 1980, claimant was reinstated to service after having been dismissed for violation of Rule G. During that case and still another infraction which claimant was guilty of, it was evident that he had a problem with alcohol. He entered a rehabilitation program and upon completion of that program was permitted to return to service on a leniency basis in accordance with a plan worked out by both parties. Carrier notes that this is the fourth time the claimant has been dismissed from Carrier's service. Based on the entire record, the obvious infraction in this dispute, Carrier concluded that it had no choice but to discharge claimant.

Petitioner states that prior to the morning of July 6, 1982, during a holiday weekend, claimant had been on a holiday and had been drinking. He arrived to work that morning after having a long journey without adequate rest but with just a hangover, according to Petitioner. Specifically, claimant denied consuming beer during working hours on July 6 or having beer in his possession while on Company property. The Organization takes the position that if there is any doubt with respect to claimant's actions in a case such as this, Carrier should not take the ultimate action of dismissal, particularly with a veteran employee. In this dispute the Organization argues that he should not have been dismissed but should have been returned to service since this was an excessive and unreasonable penalty on the part of Carrier.

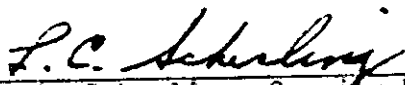
From the entire record it is quite apparent that claimant, regardless of the genesis of the incident, was under the influence of alcohol on the morning of July 6. The test at the hospital was merely confirmation of what had been observed by Carrier officials. Furthermore, the credibility issue of whether, indeed, he was drinking on the job was resolved by the hearing officer in favor of Carrier's supervisor who saw him throw the can of beer out of the cab of the truck. Thus, there is sufficient and substantial evidence in support of Carrier's conclusion that claimant was in violation of Rule G on the morning in question. In view of claimant's prior record and the seriousness of the transgression, the Board has no alternative but to agree with Carrier that dismissal was the appropriate remedy. The claim must be denied.

AWARD

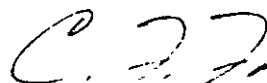
Claim denied.



I. M. Lieberman, Neutral-Chairman



L. C. Scherling, Carrier Member



C. F. Foote, Employee Member

San Francisco, CA

March 27, 1984