

PUBLIC LAW BOARD NO. 2774

Award No. 171
Case No. 171

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE: Atchinson Topeka & Santa Fe Railway Co.

STATEMENT "1. That the Carrier's decision to remove Eastern
OF CLAIM: Division Trackman M. M. Peyton from service was
unjust.
2. Accordingly, the Carrier is now required to
reinstate Claimant Peyton with seniority,
vacation and all rights and benefits
unimpaired, and pay for all wage loss suffered
as a result from his removal from service."

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.

The record reveals that at 1.30 a.m. on August 4, 1986 Claimant was found in the Carrier's depot at Fort Madison, Iowa, in the washroom, obviously intoxicated. Carrier's special agent called the Fort Madison police who responded to the call, took Claimant to a local restaurant where he had some coffee and some food and later met a fellow employer with whom he rode to his job some distance away. Following an investigation held on October 31,

1986, Claimant was found to have violated the Carrier's rules (Rule 6, in particular) and was terminated. Rule 6 provides in pertinent part, as follows:

"Use of alcoholic beverages, intoxicants, narcotics, marijuana or other controlled substance by employee subject to duty or possession or use while on duty or on Company property is prohibited."

There was no question but that Claimant admitted having had some drinks prior to coming to the station looking for a ride to his job.

The record reveals further that Carrier raised an issue of something which occurred subsequently in which Claimant was found guilty of intoxication. This has no direct bearing on this matter, except as background. In addition, an earlier circumstance was noted in which Claimant was found guilty of violation of the same rule. Subsequent to Claimant's termination, he successfully completed the Employee Assistance Program and was participating in the outpatient phase at the time of the processing of his claim. It is obvious, however, that Claimant has the potential for extreme hazard if he continues to be dependent upon alcohol. Carrier, correctly, is extremely apprehensive with respect to returning Claimant to his position, even though that matter was discussed between the parties prior to the submission of this matter to this Board.

Based on the entire record of this dispute, it's apparent that Claimant's illness appears to be at least in remission and under control. It is this Board's judgement that under the circumstances of this man's problem, he should be reinstated on a conditional basis. That condition is, of course, that he receive no pay for time lost but more important that he abides by the rules set forth by the Employee Assistance Program, which must continue to monitor his behavior as a condition of his reinstatement. Only on that basis would it be appropriate for Carrier to reinstate Claimant to his former position. The risk of a regression on the part of the Claimant is high and the Board, with considerable trepidation, has decided that it is worth a try in order to attempt to rehabilitate this man.

AWARD

Claimant would be reinstated to his former position with all rights unimpaired conditioned on his abiding by the rules set forth by the Employee Assistance Program. Further, the Employee Assistance Program will monitor his continued performance and behavior in an effort to make sure of his compliance. He will receive no pay for time lost.

ORDER

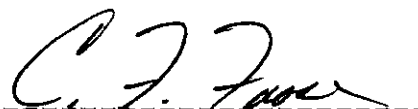
Carrier will comply with the award herein within
thirty days from the date hereof.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon
Carrier Member



C. F. Foote
Employee Member

Chicago, Illinois
July 12 1988