

PUBLIC LAW BOARD NO. 2774

Award No. 172  
Case No. 172

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

STATEMENT "1. That the Carrier's decision to dismiss Assistant  
OF CLAIM: Field Gang Trackman Mr. M. A. Sam was without  
just and sufficient cause.  
2. That Carrier will now be required to reinstate  
Claimant with seniority and all other rights  
restored and with compensation for all wage loss  
suffered."

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.

At the time of the critical incident herein, Claimant was a Trackman on a Systems Steel Gang. On May 7, 1986 at approximately 4.30 p.m., Claimant entered the Quick Bar for dinner where he was living in a bunk car with the gang. He was observed to be under the influence of alcohol at that time and was removed from service. Following an Investigative Hearing held on June 5, 1986, Claimant was dismissed from service effective June 15, 1986. The rule relied upon by Carrier in its decision to terminate Claimant

was Rule "G" (which is the equivalent of Rule 6). That rule prohibits the use of any alcoholic beverage, intoxicant or narcotic, or possession or being under the influence of such materials on Company property or on duty. It must be noted that there is little doubt that the Claimant was indeed intoxicated on the date in question, while living in the camp car on Company property.

The record indicates that Petitioner argues certain violations on the part of Carrier with respect to according Claimant a fair investigation. The Board does not concur in Petitioner's assertions in this respect, since the record does not bear out the contention that Claimant was not given a fair hearing. Carrier, on the other hand, indicates that Claimant was clearly guilty of a serious offense and it was justified in its actions in dismissing him. The Board need not belabor the seriousness of being intoxicated in this industry, nor the fact that such violations frequently and appropriately result in termination. In this instance, Carrier considered the possibility of the rehabilitation of Claimant but, in the course of the processing of his claims, he failed to enter the Employee Assistance Program when provided with the opportunity to do so. Therefore, Carrier felt it had no choice but to persist in its conclusion that he be terminated. The Board, too, has no choice in a matter such as this. There are no mitigating circumstances, nor has Claimant successfully completed an Employee Assistance Program as of the information


available to this Board. For that reason, the claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon  
Carrier Member



C. F. Foose  
Employee Member

Chicago, Illinois  
July 12, 1988