PUBLIC LAW BOARD NO. 2774

Award No. 174
Case No. 174

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employes
and
Atchison Topeka & Santa Fe Railway Company

STATEMENT OF CLAIM: "1. That the Carrier's decision to dismiss E. J. Charley was in violation of the Agreement and was without just cause.

2. That Carrier shall be required to reinstate Claimant Charley to his former position with the Carrier with seniority and all other rights restored unimpaired and compensation for all wage loss suffered because of violation as referred to above."

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 had been employed by Carrier for approximately 12 years prior to the time of his termination. His last position was that of a machine operator on the steel gang. The facts with respect to the incident which occurred on July 19, 1986 are not in dispute. At approximately 9 a.m. Claimant reported to the depot

in Gallop, New Mexico to be loaded with other men on buses destined for a work site in Illinois. One of Carrier's representatives was busy assisting employees to fill out absentee ballot forms for participation in a Navajo tribal election. Claimant herein indicated his desire to have an absentee ballot, but was having trouble recalling his census number. Carrier's officers felt, based on Claimant's behavior and the smell of alcohol, that he was under the influence of intoxicants at that time. When questioned, he admitted to drinking three cans of beer prior to reporting for the bus ride. Carrier thereafter refused to permit Claimant to board the bus and removed him from service pending a formal investigation. A formal investigation was held and Claimant thereafter was found guilty of the charges, having in that investigation also admitted that he had consumed three cans of beer prior to reporting for the bus ride. The record also indicates that Claimant had previously in 1981 been removed from service for a similar type of violation, Rule 6, but had been reinstated on a leniency basis some seven months later. He had other disciplinary problems as well, but none of them serious.

Rule 6 provides as follows:

> "The use of alcoholic beverages, intoxicants, narcotics, marijuana or other controlled substances by employees subject to duty, or their possession or use while on duty or on company property is prohibited.

> Employees must not report for duty under the influence of any alcoholic beverage, intoxicant, narcotic, marijuana or other controlled substance, or medication (whether or not prescribed by a doctor) that may in any way adversely effect their alertness, coordination reaction, response or safety."

The Organization argues that Claimant was not reporting for duty at the time that he was removed from service, but was merely reporting for transportation (free transportation) to a job site some 1400 miles distant. Therefore, he was not subject to duty for at least 24 hours and had no alcohol in his possession at the time. The Organization argues that Rule 6 does not prohibit an employee from being under the influence on company property, as such. (He was not charged, according to the Organization, with violation of Rule G.) Thus the Organization concludes that Mr. Charley, at the time, presented no problem whatever with respect to work. In view, therefore, of the fact that Claimant had been with Carrier for some 12 years and of the insufficiency of the charges proven against Claimant, the Organization maintains that the penalty assessed was unduly harsh, capricious and in abuse of discretion.

Carrier notes that there was no question but that Claimant was under the influence of alcohol at the time, since he admitted freely to having consumed three cans of beer just prior to having reported to the bus depot. Further, he had a previous record of a violation of a similar order and had been reinstated on a

leniency basis following dismissal. Furthermore, Carrier notes, that his supervisors stated that he had an alcoholic problem and would not seek help to overcome the problem. He was given the opportunity to participate in the Santa Fe's Employee Assistance Program but chose not to do so.

The Board notes that while the Organization's position is correct in that Claimant was not about to engage in any responsibility or duty for some 24 hours (due to the distance to be traveled) nevertheless, he was clearly under the influence of alcohol at the time. He had reported for duty under the influence of alcohol by his own admission. Even though the transportation to be furnished him was free this was clearly on company premises and on a company vehicle at the time that his transgression was noted. The issue of whether indeed this was a violation of Rule 6 (rather than Rule G) is a close question. However, under the circumstances of Claimant's past record and his indicated problem of alcohol use that issue appears to be relatively unimportant. However, the Board believes that the Carrier acted with some harshness and with some questionable discretion in determining that the Claimant should be dismissed under all the circumstances. He was indeed not to work for a substantial period of time after reporting to the depot. The Board recognizes full well, however, the importance of employees adhering to Carrier's rules particularly with respect to the

problems of drugs and alcohol. Carrier cannot tolerate such problems in the interest of safety as is well known. In this instance it is the Board's conclusion that the discipline accorded Claimant was too severe. He can be reinstated, as the Board views it, to his former position with all rights unimpaired subject to a favorable recommendation from a Carrier Emlovee Assistance Plan Counselor. Without that type of recommendation Carrier would be engaging in undue risk in reemploying him. His return to service, of course, will not be with pay for time lost.

AWARD

Claimant shall be reinstated to his former position with all rights unimpaired, but without pay for time lost. His reinstatement shall be subject to a favorable recommendation from a Carrier Employee Assistance Plan Counselor.

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.

I. M. Lieberman, Neutral-Chairman

C. F. Foose, Employee Member

G. M. Garmon, Carrier Member - Dissenting

Chicago, Illinois
October 11, 1988