

PUBLIC LAW BOARD NO. 2960

AWARD NO. 60

CASE NO. 83

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Lenzell Stampley was without just and sufficient cause and excessive. (Organization's File 9D-2677; Carrier's File D-11-17-381)
- (2) Claimant Lenzell Stampley shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and the Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On November 3, 1981, the Carrier directed the Claimant to attend an investigation on the following charge:

"To determine your responsibility in connection with your sleeping while on duty and violation of Rule G while on

duty at approximately 2:15 a.m. on October 31, 1981 and your subsequent removal from service."

Rule G reads as follows:

"The use of alcoholic beverage or narcotics of employes subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on Company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on Company property is prohibited."

The Carrier's case rests on the testimony of Section Foreman Kress, Car Foreman Hirschbein, and Trainmaster Leitherer, as well as certain statements by the Claimant.

Kress testified that at approximately 1:30 a.m. he sent the Claimant to get a lining bar. When the Claimant had not returned, he searched for the Claimant and found him sleeping in a truck. Kress indicated he walked up to the Claimant and called out his name a few times with no response from the Claimant. Kress then tried to find a Trainmaster without success and then decided to call the Car Foreman. Approximately 15 minutes later the Car Foreman arrived at the scene and also observed the Claimant sleeping. At this same time, employes began throwing tools into the truck in which the Claimant was sleeping, again without response from the Claimant. When the Claimant did wake up, Kress could smell alcohol on his breath. Hirschbein's testimony is essentially the same. He testified that he began to pound on the door with his fist to try to wake the Claimant up, but it took "two minutes of shouting and pounding on the truck before he did wake up." Hirschbein indicated that when the Claimant did wake up he was quite incoherent and it took him several minutes to get out of the truck. Also it took him quite a long time, according to Hirschbein, to put on a jacket which later turned out not to belong to him. He also detected a slight odor

of alcohol on the Claimant's breath. Both Hirschbein and Kress testified that initially the Claimant agreed, but later refused, to take a blood test.

The Claimant admits being asleep in the truck and admits to having the smell of alcohol on his breath. He claims that the smell, however, was from one drink he had approximately 18 hours before. He was having trouble with a tooth and hadn't eaten all day. He submitted that this explained why alcohol could still be detected on his breath. He also admitted to refusing to take the blood test. The Board also notes other evidence in the record which is favorable to the Claimant. The Trainmaster indicated when the Claimant was asked to take a dexterity test that his movements were relatively normal.

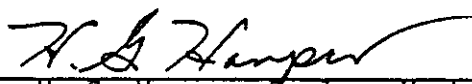
When the evidence is reviewed, there is no question that the Claimant was sleeping on duty. With respect to the Rule G portion of the charge, the Board similarly concludes that there is substantial evidence to support the Carrier's findings. Even though there is some evidence to support the Claimant, the whole of the circumstances convince us that he was under the influence of alcohol. In our opinion, the substantial nature of the evidence is supported by the following factors: (a) the smell of alcohol on his breath, (b) the fact he was sleeping and difficult to wake up, (c) his refusal to take a blood test in combination with the above factors.

With respect to whether discharge is appropriate, it has often been held that Rule G violations in the Rail Industry justify discharge. In view of this, the sleeping charge, and the fact that the Claimant had been in service only a few months, discharge cannot be considered arbitrary, capricious, or excessive.

AWARD: The Claim is denied.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated: June 5, 1984