

PUBLIC LAW BOARD 3371

AWARD NO. 25
CASE NO. 28

PARTIES TO DISPUTE

CARRIER
CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

AND

ORGANIZATION
INTERNATIONAL BROTHERHOOD OF
FIREMEN AND OILERS

CARRIER'S FILE NO.
88-86-3

ORGANIZATION'S FILE NO.
920

STATEMENT OF CLAIM:

"Claim is presented in behalf of Mr. L. Jones, Laborer,
Chicago, Illinois, for the following:

- (a) Reinstatement to service with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired with compensation for all lost time plus 6% annual interest.
- (b) Reimbursement of all losses sustained account of loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service.
- (c) The mark removed from his record."

STATEMENT OF BACKGROUND:

On December 25, 1985, Claimant was employed as a laborer at Carrier's Proviso yard, having come on duty at 11:00 p.m. the previous evening. Foreman Steve Rusch assigned the Claimant to fuel six locomotives on the main track. At about 3:00 a.m., Foreman Rusch came out to the fueling track, only to discover that two of the engines being fueled had already been filled to capacity and the fuel was overflowing onto the ground. According

to Rusch, at least 1,000 gallons of fuel had been spilled around the engines. At a formal investigation to ascertain the circumstances of this incident, Rusch testified that he turned off the fuel hoses and proceeded to look for the Claimant, who he eventually located in another locomotive, sound asleep. According to Rusch, he was unable to rouse the Claimant for several minutes, and when Claimant finally awakened, he appeared incoherent. Rusch testified that he called for the Special Agents because Claimant's condition suggested a possible Rule G violation.

When the Special Agents arrived, they conducted a field sobriety test which, to the extent Claimant cooperated, he failed. Moreover, According to General Foreman Dick Phillips, after the field sobriety test had been administered, Claimant admitted he had been drinking. Claimant denies that he made any such statement, however.

Claimant was offered a blood test to determine the level of alcohol in his bloodstream, but he refused. The Special Agents removed Claimant from service and sent him home.

Claimant was subsequently directed to attend an investigation on the charge that he violated Rule G on the date in question.

At the investigation of this matter, Claimant flatly denied that he had been drinking on December 25, 1985. He stated that on that particular evening, the weather was unusually cold somewhere around 15 degrees below zero, and while fueling the engines, he became cold, entered the cab of Unit 5514 and fell asleep. Claimant testified that he is a very sound sleeper and it is difficult to wake him up.

With reference to the field sobriety test, Claimant testified that he felt he had completed the coordination tests satisfactorily and did not need to take a blood test for further confirmation of his sobriety. Claimant conceded that he was uncooperative and belligerent, but stated that this was because of an earlier argument with Foreman Rusch.

Following the hearing, Claimant was dismissed from service on February 13, 1986. The instant claim is for reinstatement with pay for time lost.

CARRIER'S POSITION:

Carrier contends that there was substantial evidence in the record to show that Claimant was under the influence of alcohol while on duty and on Company property. Although Claimant later denied it at hearing, the record shows that he admitted to the General Foreman that he had been drinking. The conclusion that Claimant was under the influence of alcohol is further supported

by the fact that he was sleeping on duty and had difficulty performing the field sobriety tests as directed by the Special Agents. Moreover, Claimant refused to allow the Carrier to obtain the most significant piece of evidence, a blood test. Carrier asserts that from all the evidence, it reasonably concluded that Claimant was under the influence of alcohol.

Carrier further argues that a review of Claimant's personal record shows that he should not be considered for reinstatement. Specifically, Claimant was dismissed from service in 1981 for absenteeism, and reinstated on a leniency basis under a one year probation. After only 11 months, however, Claimant was again dismissed for excessive absenteeism and tardiness, and reinstated a second time on a leniency basis in February, 1984. To the Carrier, Claimant has failed to demonstrate that he has successfully resolved his problems which prevent him from being a useful employee. Accordingly, Carrier requests that this claim be denied in its entirety.

ORGANIZATION'S POSITION:

The Organization argues that, while Claimant may have been guilty of sleeping while on duty and as a result spilling fuel, he was not charged with those violations. He was charged and dismissed for violation of Rule G and, in the Organization's view, Carrier has not offered any substantial or probative evidence to substantiate that charge. Not only was there no evidence presented that the Claimant smelled of alcohol or behaved in an unusual manner, the Organization notes, but, additionally, neither of the two Special Agents were called as Carrier witnesses, so it must be presumed that their testimony would not support the Carrier's charges. The Organization submits that Carrier's entire case is based on Foreman Rusch's statement that he "suspected the Claimant was in violation of Rule G," an unsupported assertion which clearly should not be the basis for Claimant's termination. For these reasons, the Organization requests that the instant claim be sustained in its entirety.

FINDINGS:

The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by agreement dated March 31, 1983, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The Board has carefully studied the record evidence in its entirety and finds that there is substantial evidence to support the finding that Claimant was under the influence of alcohol on

the night in question. Several factors compel that conclusion. First, Claimant admitted at the time that he had been drinking. Although he later denied making that statement, the Hearing Officer could certainly conclude that Claimant's admission at the time of the incident was more credible and worthy of belief than his subsequent denials at hearing. Second, Claimant voluntarily submitted to a field sobriety test, which he failed. Third, despite the Organization's contention that Claimant's behavior was in no way unusual, the Board deems it highly unusual, and clearly suggestive of intoxication, that an employee would, in the middle of fueling several engines, simply decide to go to sleep while approximately 1,000 gallons of fuel spilled in the engine area. In view of this record, the Board agrees that Claimant violated Rule G on the date in question.

The remaining question is whether Claimant should be reinstated on a leniency basis. Generally, we are not predisposed toward reinstating an employee who has already been reinstated twice before. However, the record indicates Claimant's poor attendance record and prior dismissals to be directly attributable to a problem of alcoholism and the fact that, until now, Claimant was not motivated to seek rehabilitative help for his problem.

There are some indications that Claimant has finally realized the seriousness and the extent of his problems with alcohol. Following his termination, he entered Carrier's employee assistance program and was subsequently hospitalized for rehabilitative treatment. Claimant maintains that he now regularly attends Alcoholics Anonymous (AA) meetings and has refrained from drinking. Based on these hopeful indications, we are persuaded that Claimant, if given one last and final chance, might prove to be an acceptable employee. Accordingly, we rule to reinstate Claimant on a leniency basis without pay or other monetary benefits for all time lost, but with seniority and other contractual benefits unimpaired. As a condition precedent to continued employment, until such time as the Carrier determines appropriate, Claimant shall abide by the following terms:


1. Clearance from Carrier's medical department that he is physically fit to be returned to duty.
2. Total abstinence from alcohol.
3. Continued participation in a rehabilitation program approved by a counselor in the Employee Assistance Program.
4. Submission to random unannounced alcohol tests.

It shall be understood that any violation of the above terms by Claimant will serve as justification for the Carrier to dismiss him on a final basis.

We further order that Claimant and the Organization enter into a conditional reinstatement agreement with Carrier incorporating the above terms and that it be executed prior to Claimant's return to duty. Claimant shall not be reinstated until he has been out of service for one (1) year, in accordance with Carrier's policy, which has always been consistently and uniformly administered with respect to Rule G violators.

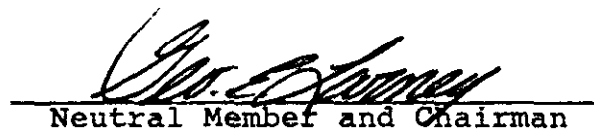
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CLAIM SUSTAINED AS PER FINDINGS.


Carrier Member

DEC 3 - 1986


Organization Member


Neutral Member and Chairman

Chicago, Illinois

Dated: November 13, 1986