

PUBLIC LAW BOARD NO. 3445

Award Number: 49
Case Number: 49

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, R. G. Short, allegedly charged with violation of Norfolk/Southern Operating Rule GR-3, attached hereto, also conduct unbecoming an employe, March 17 and 18, 1987. Our request is that he be reinstated, record cleared of all charges, pay for any and all lost time.

FINDINGS

By letter dated March 19, 1987, Claimant was instructed to attend a formal investigation on charges that he violated Rule GR-3 and engaged in conduct unbecoming an employe on the night of March 17-18, 1987. The formal investigation was held on March 31, 1987. By letter dated April 16, 1987, Claimant was suspended for 90 days based on evidence adduced at the investigation.

The issue to be resolved in this dispute is whether Claimant was suspended for just cause under the Agreement; and if not, what should the remedy be.

On the night of March 17-18, 1987, Claimant was encamped near Livingston, Alabama with T & S Gang #1. In the course of that night, Claimant poured water on a sleeping co-worker and struck a lighter to heat him up, disrupted a card game with repeated invitations to wrestle and jumped out of his trailer injuring himself. Claimant also appeared intoxicated (i.e., he smelled of alcohol and exhibited bloodshot eyes, unstable balance and abnormal behavior) to his supervisor and refused a blood alcohol test.

Rule GR-3 provides that "all employes must follow instructions from proper authority, and must perform all duties efficiently and safely."

The position of the Organization is that Claimant was unjustly suspended because the Carrier has not met its burden of proof and that Claimant committed no offense. Specifically, the Organization maintains that Claimant's behavior is not subject to discipline because he was not on duty at the time of the alleged incidents and did not fail to follow instructions, and because the Carrier's witnesses of the events testified in conflict with each other. The Organization maintains that Claimant was treated too harshly in that he engaged in the same level of horseplay as did other employes in camp who were not disciplined.

The position of the Carrier is that Claimant was suspended for just cause under the Agreement. The Carrier contends that the evidence of his abnormal behavior and specific signs of alcohol use show that Claimant was intoxicated, and it asserts that his refusal of a blood alcohol test should be construed against him. The Carrier maintains that it is well established

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that laymen are competent to determine whether someone is under the influence of alcohol. Further, the Carrier contends that intoxication and horseplay of the sort in which Claimant engaged is conduct unbecoming an employe.

After review of the entire record, the Board finds that the suspension was for just cause under the Agreement.

The Carrier has established by substantive credible evidence in the record that Claimant was intoxicated on the night in question. The lay witnesses' evidence of the specific characteristics of intoxication and Claimant's general abnormal behavior make it clear that there was sufficient evidence to reasonably conclude that Claimant was intoxicated. Intoxication is an intolerable condition for someone engaged in the transportation business. The dangerous horseplay and unpredictable behavior it produces lead to injuries, such as Claimant suffered, and unstable situations which are potentially dangerous to co-workers and the public. The Carrier's discipline was reasonable under the circumstances and was neither arbitrary, capricious nor discriminatory.

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AWARD

Claim denied.

Nicholas H. Zumas
Nicholas H. Zumas, Neutral Member

LJ Miller
Carrier Member

Boyle L. Hall
Organization Member

Date: JUNE 12, 1989