

PUBLIC LAW BOARD NO. 3460

Award No. 52  
Case No. 52

PARTIES  
TO  
DISPUTE

Brotherhood of Maintenance of Way Employees  
and  
Burlington Northern Railway Company

STATEMENT  
OF CLAIM

- "1(a) The dismissal of Section Foreman A. Leidholdt for alleged 'violation of General Rule G' was excessive and wholly disproportionate to the charge leveled against him.
- (b) The dismissal of Section Laborer S. V. Christy for alleged 'violation of General Rule G' was excessive and wholly disproportionate to the charge leveled against him.
2. Claimants shall be reinstated with seniority and all other rights unimpaired and shall be compensated 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.

The claimants herein, and the three other members of the gang, were all charged with violation of Rule G. This all was triggered by the three Carrier officers traveling to the site where the crew was working, based on some complaints written by members of the crew with respect to alleged unsafe working conditions and practices. At the investigation which evolved from this initial process, it appeared that Claimant Leidholdt, the foreman, bought beer for his crew on the way home to their base after work on three different occasions. The beer was consumed in the Company truck which was being driven back to the base. This was undenied by the claimants or any other members of the crew. It was readily apparent that this had taken place. Based on this information, Carrier promptly found all members of the crew guilty of violation of Rule G and

dismissed the entire group. Subsequently, all members of the crew but for Section Laborer Christy (one of the two claimants herein) entered the Employee's Assistance Program. Thereafter, the three members of the crew (all but claimants herein) who completed the Employee Assistance Program were offered reinstatement on a leniency basis. They all accepted.

Carrier takes the position that the two claimants herein were guilty of a serious infraction of a rule which is vital in this industry. Drinking while on duty and in a company vehicle is clearly not only extremely dangerous but devastating in its implications. It cannot be tolerated. From Carrier's point of view, since the infraction was freely admitted by the two men, the discipline of dismissal was fully warranted. Carrier also raises the issue of laches which has been raised in a number of cases before this Board.

Petitioner argues that the actions of the foreman in buying beer for his crew was well motivated. Furthermore, the discipline in this instance was clearly not warranted. Particularly, the Organization notes, in view of the reinstatement on a leniency basis of the other employees, the Carrier's actions with respect to these two employees are simply inappropriate and discriminatory.

From the entire record, the Board finds that there is no doubt but that Carrier was correct in that the claimants herein were guilty of the infraction charged. Buying and consuming beer while in a Company vehicle is not tolerable. The record reveals, however, that all of the employees in the group were offered reinstatement on a leniency basis providing that they went through the Carrier's Employee Assistance Program successfully. All but Christy agreed and went through the program and were offered leniency thereafter. All, again, but Christy accepted except, as well, Claimant Leidholdt who apparently was also going to be reduced to the rank of laborer upon his reinstatement. Since Leidholdt had ten years of service with Carrier, he refused to accept the reinstatement on a leniency basis which involved his demotion.

The Carrier in this instance attempted to treat all of the employees on a consistent and fair basis. Claimant Christy did not go into the Employee Assistance Program and, therefore, received no offer of leniency. He had no basis, and has no basis, for his claim in view of the seriousness of the infraction. With respect to Leidholdt, even though offered reinstatement on a leniency basis upon completion

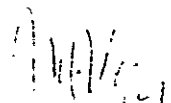
of the program, he refused because he did not wish to have his rank reduced to that of laborer. It must be noted that Leidholdt, as a foreman, had more culpability than any of the other employees. For that reason, he shall now be offered reinstatement as a foreman with all rights unimpaired but without compensation for the lengthy period out of work as penalty, subject only to clearance by the Employee Assistance Program. His time out of service is sufficient discipline for the seriousness of his infraction, as the Board views it.

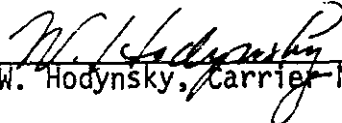
AWARD

Claim sustained in part; Claimant Leidholdt will be reinstated to his former position with all rights unimpaired but without compensation for lost lost in accordance with the findings above. His time out of service shall be considered to have been a disciplinary layoff. The claim with respt to Mr. Christy is denied.

ORDER

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

  
I. M. Lieberman, Neutral-Chairman

  
W. Hodynsky, Carrier Member

  
F. H. Funk, Employee Member

St. Paul, Minnesota  
*August 8*, 1986