

PUBLIC LAW BOARD NO. 3460

Award No. 53
Case No. 53

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

- "1. The dismissal of grinder-operator L.E. Merritt for alleged violation of rule G of the rules of the Maintenance of Way Department was without just and sufficient cause and on the basis of unproven charges.
2. The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he 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.

Claimant had been working with a welding crew as a grinder-operator at Sand Point, Idaho, when the incident involved in this dispute occurred. His normal work day was from 6 AM to 3:30 PM. Since the crew's assigned headquarters did not have adequate facilities to secure the gang truck, claimant was given permission from the foreman to take the truck home at the end of each work day for the purpose of securing it and its contents against vandalism and theft.

He had been instructed, however, that the vehicle was only to be used in connection with Company business. On Friday, August 29, claimant was permitted to take the Company truck to his house for the weekend at the end of his work day. It was later discovered that, at approximately 8:30 PM on that day, claimant was involved in a hit and run accident with the Company truck while intoxicated resulting in an individual being hospitalized. When he was found by the police he was discovered to have been in an intoxicated condition and taken into custody and the Company truck was impounded. Subsequently the claimant was charged with unauthorized operation of the vehicle, with driving and causing a collision as a result of that unauthorized operation, including damage to the vehicle and to the other driver and furthermore, being under the influence of alcohol in violation of rule G at the time. Following an investigative hearing, he was found guilty of the charges and discharged.

The Petitioner urges that claimant's penalty of dismissal was too harsh. First it is that he was found to be in violation only of rule G and not of the other charges, and that he had entered a rehabilitation program for his substance abuse. Further, the Organization maintains that the claimant was not in violation of the rule since he was not on duty or subject to duty or on Company property at the time of the incident.

The Carrier notes that claimant admitted that he was under the influence of alcohol while operating the Company vehicle. He also testified that he did not comply with rule G, as well as certain other rules. In view of the nature of the incident and the fact that a citizen was injured as a result of claimant's unauthorized use of the Company vehicle while intoxicated causing an accident being a serious matter, the Carrier insists that it must discipline claimant for this situation in view of its responsibility to the community as well as to its employees. It is obvious that claimant violated rule G as he admitted according to Carrier. Furthermore, Carrier notes that while claimant initially entered the rehabilitation program, he did not complete the program and is not considered to be a good sobriety risk for the future. Since he admitted the violation, the Carrier had no choice in this instance but to terminate him.

The Board finds that Claimant was guilty of the charges as indicated by Carrier and that such a situation is not one which can be tolerated by this employer. The fact that he caused an accident while intoxicated is further evidence of the necessity for strict adherence to the rule in question. Since the investigation was fair and impartial, and the discipline was commensurate with the violation involved, the Board does not believe it should in any sense question the appropriateness of the conclusion reached by Carrier.

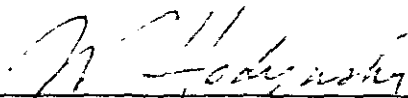
The Claim must be denied.

AWARD

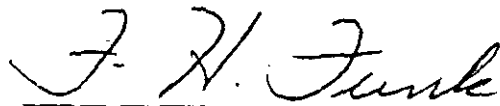
Claim denied.



I.M. Lieberman, Neutral-Chairman



W. Hodynsky, Carrier-Member



F.H. Funk, Employee Member

St. Paul, Minnesota

December 12, 1986