

PUBLIC LAW BOARD NUMBER 3530

Award Number: 46

Case Number: 46

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Assistant Section Foreman, Thomas Young, 2906 Glendale Avenue, N.W., Roanoke, Va. 24017 was dismissed from service on December 2, 1983 for alleged violation of Rule G. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request reinstatement with back pay and vacation and seniority rights unimpaired.

FINDINGS:

Claimant, at the time of the incident in question, was employed as a Section Foreman at Carrier's Roanoke terminal. On December 2, 1983, Claimant was dismissed from service for allegedly being intoxicated while on duty. An investigation was held on January 6, 1984. By letter dated January 20, 1984, Carrier reaffirmed its dismissal of Claimant.

The issue to be decided in this dispute is whether

Claimant was dismissed by Carrier for just cause under the Agreement.

The position of the Organization is that the discipline imposed against Claimant was unwarranted and excessive under the circumstances.

The Organization first contends that Claimant's testimony indicated that he had drunk heavily the evening before the incident, but had not consumed any alcohol while on duty on December 2, 1983. The Organization therefore argues that Claimant's blood alcohol level of .219 on the date in question was fully explainable by his prior alcohol intake.

The Organization further alleges that claimant, in recognition of his alcohol problem, enrolled in Carrier's A.R.S. Program, thereby indicating a willingness to recognize and deal with his problem. The Organization maintains that under the circumstances, the discipline imposed was excessive, and accordingly should be reduced or eliminated.

The position of the Carrier is that Claimant was justifiably dismissed for being intoxicated while on duty. The

Carrier contends that substantial evidence was presented clearly establishing claimant's culpability.

Carrier first cites the blood alcohol level of .219 taken from Claimant on the date in question, well above the .10 minimum considered intoxication by the State. Carrier maintains that this alone established Claimant's violation of Rule G, stating "The use of alcohol beverages...by employees subject to duty...is prohibited." Carrier contends that Claimant's excuse of drinking the evening before lacks credibility, particularly in light of the extremely high alcohol level reading.

Carrier cites several awards holding that intoxication while on duty constitutes clear grounds for dismissal. Carrier maintains that it cannot allow such employees to endanger themselves, other employees, and Carrier's operations.

After review of the record, the Board finds that the claim must be denied.

It is not the purpose of this Board to rehear an investigation that the Carrier held, but only to determine if

the discipline imposed was arbitrary, capricious or an abuse of discretion.

It is a well-established principle that Carrier may weigh evidence and determine the credibility of testimony so long as it does not abuse its discretion in so doing. In the present case, we find no evidence that Carrier abused its discretion.

Claimant's only defense to the intoxication charge is that he was intoxicated the previous evening. We find that explanation lacks credibility. The alcohol reading of .219 taken on the date in question far exceeds the recognized level necessary to establish intoxication. Even if we were to grant Claimant's excuse, he would still be guilty of intoxication while on duty, in clear violation of Rule G.

It is an equally well-established principle that Carrier is under no obligation to retain employees found to be intoxicated while on duty. To the contrary, Carrier has a responsibility to that employee and other employees to ensure their overall safety. Carrier cannot and should not tolerate employee intoxication while on duty. In the present case, Carrier established through substantial evidence that Claimant

was intoxicated while on duty on December 2, 1983. Carrier's decision to dismiss Claimant under the circumstances cannot be seen as arbitrary or an abuse of discretion in any way. Accordingly, the claim must be denied.

AWARD:

Claim denied.

Nicholas Kumar  
Neutral Member

J. A. Albatello Jr.  
Carrier Member

Bryce L. Hall  
Organization Member

Date: 1-21-87