

PUBLIC LAW BOARD NO. 3542

Parties
to the
Dispute

:
: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES :
: :
: vs. :
: :
: CONSOLIDATED RAIL CORPORATION :
: :
:

Case No. 35

Award No. 33

STATEMENT OF CLAIM

1. That the discipline imposed upon L. J. Fuhrman on July 13, 1984, was arbitrary, excessive and unsupported by the evidence adduced at trial.
2. That L. J. Fuhrman be immediately restored to service with all seniority rights unimpaired and compensated for all earnings lost as a result of this discipline.

OPINION OF THE BOARD

Claimant L. J. Fuhrman was a Trackman in Carrier's service at the Rockville Project, Rockville, Pennsylvania. On June 27, 1984, Claimant attended a hearing into the following charges:

1. Your consumption of an alcoholic beverage at approximately 11:45 A.M., June 8, 1984, while on duty at the Rockville Project, Rockville, PA.

2. Violation of Conrail Rules of the Transportation Department, (Effective 9/26/82), Rule G - The use of intoxicants, narcotics, amphetamines, or hallucinogens by employees subject to duty or their possession or use while on duty is prohibited.
3. Violation of Conrail Safety Rules, Maintenance of Way Employees - S7C, Rule 3010. Narcotic (medication or drug), and/or alcoholic beverage must not be used while on duty or within eight (8) hours before reporting for duty.

At the conclusion of the investigation, Claimant was found guilty as charged and dismissed from Carrier's service.

This Board has reviewed the record of the case with special attention to testimony of the eye-witnesses to Claimant's drinking beer. We find no basis in the record for concluding that Claimant was improperly charged or improperly found guilty of the charges. We see no reason for the witnesses to concoct a story that they saw Claimant drinking beer. After reviewing the testimony of the witnesses, the Hearing Officer concluded that Claimant was guilty. This Board has no authority, based on the record, to overturn that decision.

As to the penalty of dismissal from service, here too the Board is limited. Given the seriousness of

Claimant's Rule G violation, the only question to be resolved is whether, in all the circumstances which exist, the discipline is "harsh and excessive" as contended by the Petitioner, or "proper" as argued by the Carrier. The evidence indicates the Claimant is not an alcoholic, although he did have a beer with his lunch. Such conduct is inexcusable, but under the circumstances in this particular case, permanent dismissal of Claimant is far more severe a penalty than is required by Carrier to make its point. Claimant has been held out of service a sufficient time for him to realize that consumption of alcohol while on duty will not be tolerated. Claimant shall be restored to service, but without pay for time lost or benefits. The time out of service will be a suspension. The Claimant is put on notice that he is being given another chance at being a Conrail employee and any further violation of Rule G will result in dismissal. This is his last opportunity to prove he will obey Conrail's rules.

AWARD

The Claimant shall be restored to his former position with seniority intact but without pay for lost time or benefits.

R. E. Dennis
R. E. Dennis, Neutral Chairman

J. Dodd
J. Dodd, Employee Member

R. O'Neill
R. O'Neill, Carrier Member
J. O'Neill

3-12-86
Date of Adoption