AWARD NO. 22
CASE NO. 22

PUBLIC LAW BOARD NO. 3558

PARTIES TO DISPUTE ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
) SOUTHERN PACIFIC TRANSPORTATION CO. (EASTERN LINES)

STATEMENT OF CLAIM:

"Claim on behalf of Houston Division Machine Operator W. R. Langford for all time lost, with seniority, vacation and all other benefits restored intact and with charge of violation of Company Rule 'G' removed from his record, account being unjustly dismissed and not allowed a fair and impartial investigation." (MW-84-26)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Following a company hearing, Claimant was notified that he was dismissed from all service as a result of the Carrier having determined him to have been in violation of Rule "G". In its letter, Carrier offered Claimant "a conditional reinstatement" provided he was willing to participate in and successfully complete a rehabilitation program. It directed Claimant make an appointment with the Employee Assistance Counselor.

The basis for the Carrier charge and dismissal of Claimant came from testimony of a Carrier official who stated that he had observed Claimant in an intoxicated condition while in a NAPA Auto Depot Store in Lufkin, Texas at approximately 3:00 P.M. on July 6, 1984. The Claimant was said to have been in the store, while on duty, for the purpose of purchasing a mirror for his truck. In any event, as concerns the charge, the Carrier official said: "I noticed he was staggering when he was walking. After talking to him, his voice was slurred and I could smell some type of alcohol on his breath." On further examination, the official also acknowledged that Claimant's shirt was dirty and had a few drops of blood on it, and that Claimant also had a "little scratch" on the front of his nose. In this regard, he said Claimant had told him that he had fallen off the company bulldozer that was loaded on what is known as a "low boy" transporter. The official said that he had offered to take Claimant for medical treatment, but had not asked Claimant to submit to a screening test for alcohol.

The Carrier official also said that another employee who was with Claimant in the store had stated that he too believed Claimant to have been under the influence of alcohol, and that he would offer a written statement to the supervisor to that effect. The Carrier official also testified that he had discussed his concern about Claimant being intoxicated with another employee who had been at the location where Claimant had reportedly fallen from the bulldozer, and that this employee had stated that Claimant was under the influence of alcohol.

Both employees referenced by the Carrier official denied having commented upon or agreed with the Carrier official about Claimant having been in an intoxicated condition. However, one of the employees did say that the official had mentioned to him that he (the official) thought Claimant was intoxicated and had directed him to take Claimant home.

A third employee called to testify at the company hearing in regard to a report that he had told a special agent that he had noticed Claimant's speech was slurred and that he was not acting "normal," testified that he thought Claimant might have been slurring his words "because he had a mouthful of gravel and his tongue was busted at the time he talked to him" after he had attempted to assist Claimant up to the bulldozer and Claimant had fallen on him from the bulldozer track.

Relying principally on the testimony of the employee witnesses, the Organization contends that the evidence as presented at the hearing was not substantial or of such credible nature as to warrant a finding of guilt and the subsequent imposition of the dismissal penalty against the Claimant.

There is no question that a determination in this case must fall upon the credibility of witness testimony. Therefore, the Board has carefully studied the transcript to determine what probative significance may be drawn from statements offered by the several witnesses. In this respect, we would first note that it has been recognized by many boards of adjustment that testimony of a Carrier official need not be necessarily corroborated to uphold a finding of guilt of an employee regarding the violation of company rules. These past findings notwithstanding, we believe testimony of the employee who was in the store with the Claimant at the time the Carrier official determined Claimant to be under the influence of alcohol does in fact tend to support the testimony of the Carrier official. Here we would note that although this employee witness first maintained that the Carrier official had not mentioned Claimant's alleged intoxicated condition to him

while they were in the store, he thereafter responded to more direct questions which showed that the Carrier official had in fact discussed such matter with him. Furthermore, we find it worthy of note that in response to a question as to whether in his opinion, Claimant was intoxicated on the date in question that this witness said: "I don't know." This response did not appear to be the unequivocal denial which one would normally have expected in the light of other testimony offered by the witness in maintaining Claimant had only been hurt, and that he was not intoxicated. Further, it is obvious from the testimony of this same witness that he had been told to take Claimant home because the Carrier official was of the opinion that Claimant was intoxicated and not because he believed Claimant was hurt.

The Board also believes that close examination of testimony by the other witnesses tends to support the conclusion that Claimant was exhibiting the outward signs of a person under the influence of intoxicants. We say this especially in the light of it being difficult to comprehend why it would have been necessary that the one employee witness, who was not even on duty or assigned to the work detail, found it necessary to assist Claimant onto the bulldozer, and why he had to brace Claimant while the latter attempted about three times to reach a handle on the bulldozer before he fell atop the witness.

In the the circumstances of record, we believe the Carrier had sufficient reason to place a high degree of credibility in the testimony of its chief witness and, in view of Claimant's record revealing that he had been disciplined on several past occasions for violation of Rule "G", to hold that disciplinary action was warranted.

While Claimant's fellow employees may have believed that they were helping Claimant by their testimony, they do a disservice to Claimant and the safety of their own well-being and that of other employees by seeking to protect Claimant from the adverse circumstances of an apparent problem with alcohol, or something which may well be treated by Claimant's personal recognition of the problem and enrollment in a professional rehabilitation treatment program.

As to the appropriateness of a penalty to be imposed, we thirk that in consideration of Claimant's 28 years of service and the Carrier having made an offer of a conditional reinstatement, that Claimant be reinstated to service with seniority and other benefits unimpaired, but without compensation for time lost,

provided that Claimant enroll in and actively participate in a rehabilitation program to be monitored by Carrier's Employee Assistance Counselor.

AWARD:

Claim disposed of in accordance with the above Findings.

Robert E. Peterson, Chairman
and Neutral Member

C. B. Goyne
Carrier Member

M. A. Christie
Organization Member

Houston, TX
February 4, 1986