

PUBLIC LAW BOARD NO. 3558

PARTIES     )  
TO            )  
DISPUTE     )     BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
                  )     SOUTHERN PACIFIC TRANSPORTATION COMPANY  
                  )     EASTERN LINES

AWARD

STATEMENT OF CLAIM:

"1. Carrier violated the effective Agreement when Dallas-Austin Machine Operator L. R. Muzny was unjustly dismissed from service.

2. Claimant Muzny shall now be reinstated to his former position with all seniority, vacation rights and other rights accruing to him unimpaired in addition to his record being cleared of the alleged charge of being in violation of Carrier Rules 607, 609 and Rule G, in addition to all pay lost commencing April 22, 1986, and to run concurrently until Mr. Muzny is restored to service." (MW-86-84-Muzny)

OPINION OF BOARD:

As a result of charges dated April 30, 1986 and a hearing on May 7, 1986, Claimant, a Machine Operator with approximately 16 years of service, was dismissed by letter dated May 13, 1986 for being in violation of Rules 607, 609 and G.

Evidence presented during the investigation shows that on April 22, 1986, at approximately 12:20 a.m., Claimant, after admittedly consuming approximately five cans of beer, entered a Carrier trailer shared by Claimant and another employee. Claimant kicked various items in the trailer, cursed at and made threatening type remarks towards the other employee. Later that morning, Claimant used profanity towards one of the Carrier's Roadmasters when the Roadmaster asked to see Claimant's commercial vehicle license. Further, Claimant exhibited reddened eyes and spoke in a loud fashion. According to the opinion of the Carrier's Medical Officer, tests administered that morning showing alcohol levels of .09% (a urinalysis taken at 10:00 a.m. with Claimant's consent) and .056% (a

blood test taken at 11:13 a.m. at Claimant's request) demonstrated that when the incident occurred, in excess of eight hours prior to the administering of the tests, Claimant was intoxicated.

We find substantial evidence in the record to support the Carrier's decision to impose discipline. Claimant's conduct fell within the prohibitions of Rules 607 (prohibiting quarrelsome conduct), 609 (requiring care of Carrier property); and G (prohibiting use of alcoholic beverages or being under the influence while on Company property). The fact that a conflict exists in the testimony, in that Claimant denies the activity attributed to him in the trailer, in and of itself, cannot cause this Board to make a credibility determination different from that made during the investigation. Second Division Awards 10840; 10394. Further, the record supports the Carrier's determination that Rule G was violated in light of the evidence showing Claimant's behavior, his physical appearance, the results of the tests and the extrapolation made to the time of the incident and Claimant's admission that he was drinking. We note that Rule G is broad enough to cover Claimant's conduct in that the Rule prohibits usage by employees "subject to duty, when on duty or on Company property .... and further prohibits being "... on Company property under the influence ...."

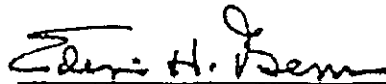
With respect to the amount of discipline imposed, we cannot say that dismissal was an arbitrary or capricious action by the Carrier. We note that Claimant's record since 1980 shows a dismissal for violation of Rule G and being quarrelsome with reinstatement on a leniency basis; another dismissal for failure to report an injury on time with reinstatement again on a leniency basis; 45 demerits resulting from Claimant's involvement in an accident and another dismissal for being quarrelsome and vulgar with a fellow employee wherein this Board ordered reinstatement without compensation for time lost. Public Law Board 3558, Award No. 8. In that award, we admonished Claimant "that control of his volatile disposition is necessary to any continuing future employment relationship." Claimant obviously has chosen to ignore that admonishment. We therefore find that the dismissal

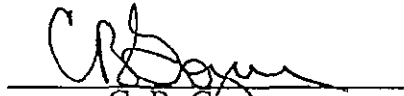
355B - 50 7/20/87

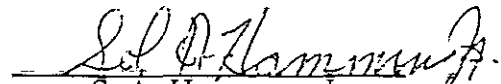
must be upheld.

AWARD:

Claim denied.

  
Edwin H. Benn, Chairman  
and Neutral Member

  
C. B. Coyne  
Carrier Member

  
S. A. Hammons, Jr.  
Organization Member

Houston, Texas  
July 20, 1987