

PUBLIC LAW BOARD NO. 4021

Award No. 10
Case No. 3

<u>PARTIES</u>	The Brotherhood of Maintenance of Way Employes
<u>TO</u>	and
<u>DISPUTE</u>	The Atchison, Topeka & Santa Fe Railway Company

<u>STATEMENT</u>	1. Carrier's decision to remove Valley Division Trackman James Campbell, Jr., from service effective May 25, 1984, was unjust.
<u>OF CLAIM</u>	2. Accordingly, Carrier should be required to reinstate Claimant Campbell to service with his seniority rights unimpaired and compensate him for all wages lost from May 25, 1984.

FINDINGS

This Board, upon the whole record and all the evidence, 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 by Agreement dated November 26, 1985, and has jurisdiction of the parties and the subject matter.

Claimant reported to his work station on the morning of May 25, 1984, shortly after 7:00 a.m. His hand was cut and bleeding, and he advised his Foreman that he wanted to work part of the day, and then seek medical attention. The Foreman refused to allow Claimant to work, and told him that he should leave in any event, because he "smelled like beer." Claimant persisted, and the Foreman referred him to the Track Supervisor. The Track Supervisor also declined to allow Claimant to work before seeking medical attention, but indicated that "if the doctor says you can work, okay, you can work." Claimant persisted, and asked to call the Roadmaster.

Claimant talked with the Roadmaster on the telephone, and the Roadmaster agreed to send the Assistant Division Engineer to the site to handle the matter. When the Assistant Division Engineer arrived, the Claimant again insisted that he be allowed to work, and the Assistant Division Engineer declined and asked Claimant if he had been drinking. Claimant denied that he had been drinking, but agreed to take a medical test to determine the facts.

When Claimant and the Assistant Division Engineer stopped at the Assistant Superintendent's office to pick up the necessary forms, the Assistant Superintendent talked with the Claimant, and asked if he had been drinking. Claimant said "no, I never drink." The Assistant Superintendent relieved Claimant from service pending a Formal Investigation, and Claimant became angry and argumentative with the Assistant Superintendent. He did, however, agree to a medical examination, and went with Assistant Division Engineer Green to the Hospital. The record is not clear with respect to what happened at the Hospital; however, it is clear that the test was not completed, and the results were not made a part of this record.

At the Investigation, the foregoing facts were developed. In addition, it was disclosed that Claimant had "called-in" during the night, reported his injury, and indicated that he would not be reporting to work on that day. Further, the Foreman, Track Supervisor, Assistant Division Engineer and the Assistant Superintendent testified that they observed the odor of alcohol on Claimant, that his eyes were "glassy", his gait was unsteady, and

that he was not very coherent. They testified that Claimant told some of them that he "never drank alcohol", while he told others that he had been drinking the previous day.

Claimant's testimony was vague and inconsistent, and often in conflict with the version of facts presented by the Carrier witnesses. In the face of the consistent, positive testimony of the four Carrier witnesses, we must resolve the conflict in favor of the Carrier.

The Organization raises two defenses, both of a technical nature. It argues that Carrier's action was improper because it failed to produce the results of the urinalysis test, and that Claimant was not "on duty" when the circumstances occurred. The first point raises very grave concerns, and the Board feels strongly that if a medical test is performed, the results must be produced and made a part of the record. Failure to produce the results of such a test deprives both the Organization and the Board of evidence which clearly is relevant to the dispute, and, in fact, creates suspicion that the results support Claimant's position.

In this case, however, the record indicates that the test was not performed. Therefore, the test and events which surrounded the test have not been considered by the Board. The record contains ample other evidence that Claimant was under the influence of alcohol.

The Organization's second defense, that Claimant was not on duty at the time, is irrelevant to this dispute. Claimant was charged with violation of Rule 6 of the Carrier's General Rules for the Guidance of Employees, which provides in part:

The use of alcoholic beverages, intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, or on Company property is prohibited. Employees must not report for duty under the influence any drug, intoxicant, medication or other substance . . . that will in any way adversely affect their alertness, coordination, reaction, response, or safety. . . .

The Claimant does not deny that he was reporting to work, in fact, the undisputed facts show that he made persistent attempts to report for duty to the Foreman, the Track Supervisor, and the Assistant Division Engineer. Each attempted to persuade Claimant

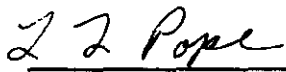
to go and seek medical attention, and if he had done so, it is likely that none of this would have transpired.

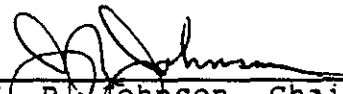
The Board finds that the Claimant was guilty as charged, that the nature of the offense was serious, and that the discipline was warranted.

AWARD

Claim denied.


C. F. Foose, Employee Member


L. L. Pope, Carrier Member


J. R. Johnson, Chairman
and Neutral Member

Dated: March 3/, 1986