

PUBLIC LAW BOARD NO. 4021

Award No. 39  
Case No. 39

PARTIES  
TO  
DISPUTE

The Brotherhood of Maintenance of Way Employees  
and  
The Atchison, Topeka & Santa Fe Railway Company

STATEMENT  
OF CLAIM

1. Carrier's decision to remove former Plains Division Trackman F. E. Cain from service effective August 30, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Cain with his seniority rights unimpaired, and compensate him for all wages lost from August 30, 1985.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated November 26, 1985, and has jurisdiction over the parties and the subject matter.

Claimant was employed by the Carrier as a Trackman, and had less than five years' service at the time of his discharge. On August 30, 1985, Claimant was observed by the Roadmaster and his Foreman, and they determined that he was under the influence of an intoxicant, and unfit for duty. He was removed from service, pending an investigation, which was held on September 13, 1985, and he was discharged on September 25, 1985.

The record reveals, through the testimony of the Roadmaster, that the Claimant was walking unsteadily, seemed to be in a trance, and had the strong odor of alcohol. The Roadmaster observed the Claimant for some time, and rode in a closed vehicle with Claimant for some time. He testified that "there was no doubt in my mind that he was still under the influence of alcohol."

The Foreman testified that Claimant fell down off the stairs, nearly fell down whenever he stepped and hit the ground, and that it was he who called the Roadmaster to observe the Claimant. It is clear from the record that the Foreman believed that the Claimant was under the influence of alcohol.

The Claimant admitted that he had been drinking the night before, but denied that he was under the influence of alcohol at the time he was removed from service. A careful review of the Claimant's testimony reveals that he seemed to acknowledge that he had the odor of alcohol, but referred to his condition as "not drunk or nothing like that."

In the absence of sophisticated equipment or professional training, the question of whether someone is "under the influence" is quite subjective. However, in such cases, the opinion of the individual in question is less objective than that of others, due to the effects of alcohol consumption. The issue here is not whether the Claimant was "drunk", but whether he was sufficiently under the influence of alcohol that he could not adequately perform his duties. There is ample evidence to support that conclusion, and, therefore, the Claimant was in violation of the Carrier's Rules.

With respect to the penalty assessed, the record shows that the Claimant had been assessed discipline three times before, and had a demerit balance of fifty demerits on his record at the time of

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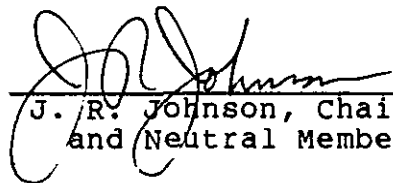
the discharge. Under the Brown system of discipline, in effect on this property, Claimant would have been subject to discharge if he had been assessed as few as ten additional demerits for this offense. Therefore, the penalty of discharge clearly was appropriate.

AWARD

Claim denied.

  
C. F. Foose, Employee Member

  
L. L. Pope, Carrier Member

  
J. R. Johnson, Chairman  
and Neutral Member

Dated: 