

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of)	
Way Employees)	
)	Case No. 21
vs)	
)	Award No. 18
Burlington Northern Railroad)	

STATEMENT OF CLAIM

1. The dismissal of Machine Operator J. LaFrance for alleged violation of Rules 2 and 565 was without just and sufficient cause and excessive.
2. The Claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS

On May 25, 1982 the Claimant was advised to attend an investigation to determine facts and place responsibility, if any, in connection with his alleged use of alcoholic beverages and with having an altercation with an Assistant Foreman of Steel Gang No. 953 on May 20, 1982. The alleged actions by the Claimant took place at Arvada, Wyoming on the date in question at approximately 8 PM. After a number of postponements the investigation originally scheduled for June 2, 1982 took place on June 30, 1982. The locale of the investigation was the depot at Hardin, Montana. After the investigation the Claimant was notified by the Carrier on July 27, 1982 that he had been found guilty of consumption of alcoholic beverages on company property on May 20, 1982 in violation of Carrier's Rules 2 and 565 and that as a consequence of this he was being dismissed from service.

The Claimant raises a procedural issue on property which must be disposed of by the Board prior to issuing any decision on this claim on merits. It is the position of the Claimant that the Carrier was in violation of the time-lines of Agreement Rule 40(D) since he did not re-

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ceive the dismissal "notice until Monday, August 2, 1982" according to his own letter to the Carrier which is dated August 6, 1982. According to the Trainmaster's response to the Claimant, which is dated August 19, 1982 an attempt was made to deliver the letter of discharge on July 28, 1982 but the letter was refused for "postage due" reasons. After this happened an Officer from the Carrier personally attempted to deliver the discharge letter, found noone at home, and then mailed it out again by date of August 30, 1982. It is the decision of the Board that the Carrier made a bonified good faith effort to honor both the spirit and letter of the contract provision in question and that no contravention of Agreement occured. This issue could have been avoided if the Claimant would have paid the postage due when it arrived at his home rather than attempt to win this claim on a technicality: an analysis of the record shows that the Claimant's intentions were not consistent with a reasonable application of the contract provision in question which was negotiated in good faith by his union and the Carrier.

The company Rules at bar read as follows, in pertinent part:

Rule 2

Knowledge of and obedience to the rules is essential to safety....

Rule 565

The use of alcoholic beverages, intoxicants, narcotics, marijuana or other controlled substances by employees subject to duty, or their possession or use while on duty or on Company property, is prohibited.

The Claimant was involved in an accident on May 20, 1982 in the environs of Arvada, Wyoming and was then transported to Sheridan, Wyoming for medical treatment. The Claimant had been employed as a Machine Operator for the Carrier with a seniority date of September 26, 1976. According to testimony given at the investigation by the Assistant Roadmaster he was called at the Sheridan Center Motel in Sheridan, Wyoming at approximately 9:00 to 9:30 AM about the impending arrival of the Claimant to Sheridan and he went to the Sheridan Hospital shortly thereafter, to "...wait for the arrival of the ambulance". After the Claimant was given a blood test

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at the hospital after his arrival there it showed a .187 alcohol level reading. Legal inebriation is at the .100 level. At the investigation the Claimant could not "...recall" whether he was consuming alcohol on company property but he did write a statement which is dated on May 27, 1982 which states, in pertinent part, the following:

To Whom It May Concern:

.....

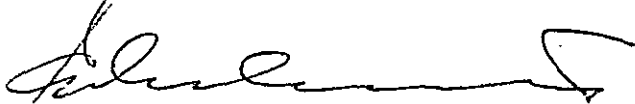
A keg of beer was on company property on May 20, 1982. I did indulge in drinking of the alcohol. I never saw who purchased the keg or who brought it on company property. I only know second or third hand information.

.....

The Claimant appears to intimate that he was not in control of his wits when he wrote the above because of the drugs he was receiving while in the Sheridan hospital. Such is not supported by the discharge summary issued by the hospital which states only that the Claimant was given ".... mild medications" for tenderness on various parts of his body from having engaged in "...some wrestling" on May 20, 1982. There is sufficient evidence of probative value in the record to warrant the conclusion that the Claimant had been in violation of the Rules at bar on May 20, 1982 and on merits the claim cannot be sustained. The Claimant was a short-term employee. Furthermore, it is well-established by arbitral forums that a company does not have to keep in its employee, for an employee's well-being and safety, as well as that of his or her fellow workers, if the employee in question is in blatant violation of a Rule such as Rule 565 (Second Division 8052, 8406 inter alia).

AWARD

Claim denied.

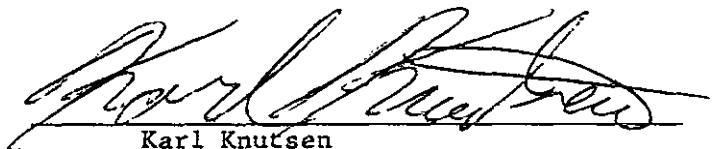

Edward L. Suntrup, Neutral Member


B. W. Potter, Carrier Member


Karl P. Knutsen, Employee Member

Date: July 7, 1987

DISSENT: The record shows that Mr. LaFrance was not on duty or subject to duty at the time of this incident. Rules 2 and 565 of Form 15125 are designed for and applicable only to an employee on duty. An employee off duty is no longer under the direction of the Carrier and therefore not subject to the rules of Form 15125. An employee off duty should be treated as any other member of the civilian populace with respect to an incident such as the alleged altercation and alcohol consumption discussed herein.

A handwritten signature in dark ink, appearing to read 'Karl Knutsen', is written over a horizontal line.

Karl Knutsen
Employee Member