

File: CMWB 85-9-SP
T-M-565C

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of Way)	
Employees)	Case No. 50
)	
vs)	Award No. 30
)	
Burlington Northern Railroad)	

STATEMENT OF CLAIM

1. The dismissal of Water Service Mechanic Steven A. Lippert for alleged violation of Rules 565 and 566 of BN Form 15001 and General Rule G of Burlington Northern Rules of Maintenance of Way Department was excessive and without just and sufficient cause.
2. Claimant should be reinstated to service with seniority and rights and benefits unimpaired, his record cleared of any reference to this investigation or subsequent discipline, that he be compensated for all wage and benefit loss incurred, and that he be afforded full promotional opportunity forfeited during his time out of service.

FINDINGS

The Claimant held position of Water Service Mechanic at the time he was cited for violation of the Rules at bar. In March of 1985 the Claimant was advised to attend an investigation to determine facts, and place responsibility if any, in connection with his allegedly reporting for work under the influence of alcohol. After the hearing on this matter was held the Claimant was advised that he had been found guilty as charged and he was dismissed from service of the Carrier.

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The discipline was subsequently appealed by the Organization up to and including the highest Carrier officer designated to hear such before this case was docketed before this Public Law Board for final adjudication.

The Rules at bar read as follows:

Rule G

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.

Employees must not report for duty under the influence of any alcoholic beverage, intoxicant, narcotic, marijuana or other controlled substance, or medication, including those prescribed by a Doctor, that may in any way adversely affect their alertness, coordination, reaction, response or 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.'

Rule 566

*Employees must not report for duty under the influence of any alcoholic beverage, intoxicant, narcotic, marijuana or other controlled substance, or medication, including those prescribed by a Doctor, that may in any way adversely affect their alertness, coordination, reaction, response or safety.

The Organization raises a number of procedural objections which the Board will, first of all, address. The Board is unpersuaded, in this instance, that the failure of the Hearing Officer to sequester witnesses at the hearing prejudiced the outcome of the hearing nor the Claimant albeit as a general principle the Board is supportive of the practice to sequester which is not uncommon to arbitral forums in the railroad industry as well as in other industries albeit the format of

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the latter may vary in other ways from that used here. The burden here, however, is upon the Organization to show that non-sequestration produced prejudice: evidence to that effect is lacking in the instant record. Railroad arbitration Awards have addressed this procedural point here raised by the Organization on many different occasions (See Second Division 9285, 9372, 10047 inter alia). The conclusions of such Awards do not materially differ from the one arrived at here. The Organization's representative also complains that the Company did not call all witnesses with pertinent information on the charges filed against the Claimant: this objection must be dismissed on grounds that the Carrier can call any witnesses it wishes during an investigation. Nor, on the other hand, as a point of equity, is the Organization limited in the number it wishes to call in defense. It is unclear whether the objection at bar is directed to alleged insufficiency of evidence presented at the investigation by the Carrier, or by the Organization itself.

On merits, there is testimony by Carrier witnesses that the Claimant was physically impaired from doing his work in a totally safe manner on the day in question, and that there was smell of alcohol on his breath. The Board is persuaded, according to substantial evidence criteria to be used in forums such as this, that the Claimant was guilty of the charges filed against him and that he was in violation of the Rules cited above. Numerous forums in this industry have established the arbitral precedent that evidence of the type proffered in this case is sufficient to permit the reasonable conclusion which the Board has framed in this instance (See Third Division 21138 inter alia). The Board also notes the Claimant's prior record, and prior discharge, and cannot reasonably conclude that the discipline assessed by the Carrier was arbitrary nor unreasonable.

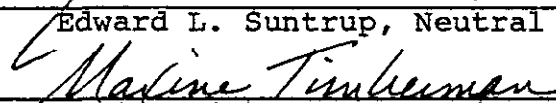
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AWARD

On basis of the record taken as a whole the instant claim
must be denied.



Edward L. Suntrup, Neutral Member



Maxine Timberman, Carrier Member



Bruce Glover, Employee Member