

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of)	
Way Employees)	Case No. 8
)	
vs)	Award No. 7
)	
Burlington Northern Railroad)	

STATEMENT OF CLAIM

1. The dismissal of Track Laborer M.M. Graeber for alleged violation of Rule G by being under the influence of alcoholic beverages while on duty was without just and sufficient cause and on the basis of unproven charges.
2. The Claimant shall be reinstated with seniority and all other benefits unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS

The Claimant was advised on November 2, 1981 to attend an investigation to determine facts and establish responsibility, if any, in connection with his alleged violation of Rule G in the vicinity of MP 171.5 East of Beach, North Dakota at approximately 8:30 AM on November 2, 1981. After the investigation was held as scheduled the Claimant was notified on November 19, 1981 that had been found guilty as charged and that he was dismissed from service for being "...under the influence of alcoholic beverages while on duty as laborer on the steel gang" at the time and locale specified in the charges against him. After the discipline was appealed on property by the Organization up to and including the highest Carrier officer designated to hear such this case was docketed before this

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Public Law Board for final adjudication.

A review of the record shows that two witnesses testified at the investigation that on the morning of November 2, 1981 the Claimant was acting a "little odd", that his speech was slurred and difficult to understand, that he smelled of alcohol, and that his eyes were "bloodshot, dilated and glazed". The Claimant was in this condition, according to these witnesses, while on duty as a member of the steel gang working in the vicinity of MP 171.5, east of Beach, North Dakota. Because of this the Claimant was removed from service on that day. At the investigation the Claimant was asked if he understood Rule G of the Carrier's Maintenance of Way Department and he responded in the affirmative. This Rule states the following:

Rule G: The use of alcoholic beverages or narcotics by employees subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on company property is prohibited.

Employees shall not report for duty under the influence of any drug, medication or other substance including those prescribed by a doctor or dentist that will in any way affect their alertness, coordination, response, safety or ability to perform their work properly.

When asked if he violated this Rule on the day in question the Claimant simply stated: "No, I didn't" without additional explanation. The primary defense of the Organization is that the testimony by the witnesses is undependable because they were without medical training and because the Claimant was never administered a scientific test to determine whether he was under the influence of alcohol on the day in question. The Board finds such argument unpersuasive. The record shows that laymen such as the Assistant Roadmaster and the

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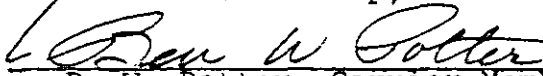
Steel Gang Foreman came to reasonable conclusions relative to the Claimant's intoxicated state by making commonsense observations with respect to his general composure and gait, his speech patterns, the appearance of his eyes and the odor from his breath and body. Arbitral forums in the railroad industry have precedentially ruled, which this Board finds persuasive, that "...intoxication need not be proven through medical or other formal tests. Reasonable men can make this type of determination" (Second Division 8420; see also Second Division 8807 and Third Division 8993, 10928, 15574 for similar reasoning). On the basis of evidence of record, therefore, the instant claim cannot be sustained.

AWARD

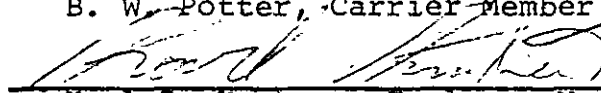
Claim denied.



Edward L. Suntrup, Neutral Member



B. W. Potter, Carrier Member



Karl P. Knutsen, Employee Member

Date:

Thursday, 24 1947