

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. The dismissal assessed Sectionman D. A. Baker for alleged violation of various company rules in connection with purportedly being observed in a condition which indicated the use of alcoholic beverages on company property, as indicated in Mr. Farr's letter of December 14, 1990, is arbitrary, unconscionable and totally unwarranted.

2. In light of (1) above, the claimant's record shall be cleared of the discipline referred to in Part (1) and he shall be returned to service and compensated for all time lost.

FINDINGS: In this dispute the claimant was notified to attend an investigation in Green River, Wyoming at 1:00 p.m. on December 3, 1990 to develop facts and determine his responsibility on a charge that while he was employed as a sectionman he was observed at approximately 9:00 a.m. on Monday, November 19, 1990 in Green River, Wyoming in a condition which allegedly indicated the use of alcoholic beverages, indicating a violation of the General Code of Operating Rules, Second Edition, effective October 20, 1989. The investigation was held as scheduled.

Dennis Paul, Manager of Engineering Maintenance, testified that on November 19, 1990 the claimant came into his office wanting to discuss the postponement of a pending investigation concerning an absentee problem. Mr. Paul testified he believed the claimant had indicated sufficient signs of intoxication for him to make a determination to remove the claimant from service pending investigation.

Mr. Paul further stated Mr. Thompson, Manager of Track Maintenance, and Foreman Joe Valdez were also present at the time, and Mr. Tanner was on the speaker phone. He testified he asked Mr. Thompson if he could smell the odor of alcohol on the claimant and the response was positive. He testified further that Mr. Tanner asked the claimant if he had been drinking, and the claimant stated he had had a few the night before but had not had any that morning.

Perhaps it should be noted that the claimant herein is the claimant who had been discharged for absences without authority in Award No. 50 of this Board. The Board was unaware of this case pending until the decision had already been made in Award No. 50. Of course, the findings herein would have no bearing on that decision.

Mr. Paul stated he informed the claimant that it was his option whether he wanted a blood test, and the claimant stated that he did wish to have a blood test. Mr. Paul testified he instructed Mr. Thompson to accompany the claimant to the Rock Springs Hospital to have the blood test made.

Mr. Paul testified the test was made at approximately 10:30 to 11:00 a.m. on that date, and the results of the test were positive. He testified the results showed .11 ethanol alcohol. Mr. Paul also stated he heard a sample was taken for the purpose of detecting drugs, and such test was negative.

G. S. Thompson, Manager of Track Maintenance, testified he smelled alcohol on the claimant's breath the morning of November 19. He stated when he rode with the claimant to the hospital, the smell of alcohol was overpowering.

Foreman J. L. Valdez testified he drove the claimant to Green River and he did not smell alcohol on his breath, and he was in Mr. Paul's office when they questioned the claimant concerning whether he had been drinking or not, and when asked if he could smell anything, he stated he could not. He testified he did not go to the hospital in the same vehicle as the claimant and Mr. Thompson.

The claimant testified he had 6 or 7 beers at around 6:00 p.m. the night before. He testified he was prepared to perform service on the 19th. He testified when he reported to work at Point Rocks he didn't think he was under the influence of alcohol.

The claimant also testified he had been in an alcohol program in the past and he had been advised to quit drinking alcohol, but on the night of November 18 his former wife advised him she would attempt to keep him from seeing the children, and he started drinking. He testified he did not believe he was under the influence of alcohol and he was prepared to go to work.

The Union took the position that the Carrier violated Article 48(c) in that the charges were not precise. Again the Board has studied the charges involved herein and finds that the parties knew exactly and precisely with which violations the claimant was charged.

The Union points up that Section Foreman Valdez stated he could not detect any alcohol smell or physical problems associated with alcohol use by the claimant, and the claimant denied being intoxicated and having alcohol in his system.

The Union then points up that the claimant challenged having the Carrier take his blood test for alcohol on the date in question. The Union also objected to the chain of custody form presented and contends the sample of blood was not the claimant's. The Union urges the claimant testified he was using mentho-lyptus ice blue cough drops, and it was possible the two Carrier witnesses confused that smell with the odor of alcohol.

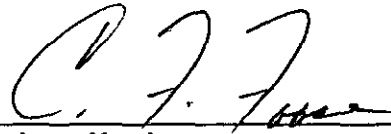
The Board has reviewed all of the testimony and evidence of record. The Carrier has established an alcohol drug abuse program which will assist employees. The evidence indicates the claimant herein worked with this program off and on for approximately two years.

The claimant admitted drinking 6 or 7 beers the night before. That testimony, along with the testimony of Carrier witnesses, is sufficient evidence for the Carrier to find the claimant was guilty as charged.

This Board has just reinstated the claimant in a case (Award No. 50) where the investigation was held on the morning of December 3. As of this time the second dismissal becomes effective. The Board is not justified in overruling the decision of the Carrier under these circumstances.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member


Carrier Member