

AWARD NO. 30

Case No. 30

PUBLIC LAW BOARD NO. 4823

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
TO
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
versus

STATEMENT OF CLAIM:

"Carrier's decision to remove former Arizona Division Trackman H. Gorman from service, effective July 30, 1990, was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from July 30, 1990. (11-680-120-875/170-1312-906)"

FINDINGS:

This Public Law Board No. 4823 finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

On July 10, 1990, Carrier's Division Manager wrote the claimant, in pertinent part, as follows:

"You are hereby notified to attend formal investigation in the Division Office, Winslow, Arizona, at 10:00 AM, M.D.S.T., Friday, July 27, 1990, concerning your alleged violation of Rule G, Safety and General Rules for all employees, Form 2629 Standard, October 29, 1989, while employed as a trackman on Extra Gang 731 at Williams, Arizona on July 10, 1990.

You may arrange for representation in line with the provisions of the Agreement or Schedule covering your working conditions, and you may likewise arrange for the attendance of any desired witnesses."

The investigation was held as scheduled, following which Carrier found the claimant responsible for violation of Rule G and removed him from service as a result thereof.

Testimony developed in the formal investigation developed that on the morning of July 10, 1990, the claimant reported for duty under the influence of alcohol; he emitted a very strong odor of alcohol, his eyes were bloodshot, he was incoherent and he staggered. Claimant testified that he had consumed six (6) half-pints of Southern Comfort whiskey

between 7:00 PM and Midnight the previous evening, July 9, 1990. The Board finds, therefore, that the claimant was properly found responsible for violation of Rule G.

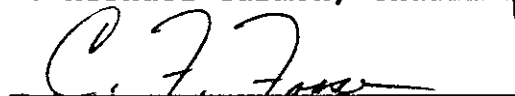
A review of the claimant's past discipline record reveals that he has been disciplined on six previous occasions, all involving absence from duty without authority. One occasion (a six-month suspension) also involved being under the influence of alcohol on company property. Such a discipline record often indicates that the employee has a problem with alcohol or drugs. In the instant case, Claimant's representative at the investigation stated that the claimant may have a problem with alcohol and recommended that he be referred to an Employee Assistance Counselor for assistance in overcoming his problem.


The existence of an Employee Assistance Program is indicative that the Carrier regards alcoholism as an illness. Accordingly, in deference to the Carrier's enlightened policy toward employees with this particular illness, as well as the claimant's relatively long service (approximately 18 years), the Board finds as follows: Upon receipt of a favorable recommendation from Carrier's Employee Assistance Counselor, the claimant will be reinstated, without pay for time lost and with 20 demerits standing on his record. Claimant must understand that his rehabilitation is a prerequisite to the aforementioned reinstatement; there can be no implementation of the award until Claimant first satisfies this requirement.

AWARD: Claim sustained, in part, subject to the contingency set forth in the findings above.

ORDER: Carrier is directed to reinstate Claimant within thirty (30) days from the date Claimant receives a favorable recommendation from Carrier's Employee Assistance Counselor.


G. Michael Garmon, Chairman


Employee Member


Carrier Member

Dated at Chicago, IL: January 31, 1991