

PUBLIC LAW BOARD NO. 5950

AWARD NO. 3
NMB CASE NO. 3
UNION CASE NO. C-94-D070-10
COMPANY CASE NO. MWA940601AB

PARTIES TO THE DISPUTE:

BURLINGTON NORTHERN SANTA FE RAILWAY

- and -

BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The dismissal of Track Inspector W. C. Saathoff for alleged violation of General Rule G of the Maintenance of Way Rule Book, Rule 564 and Item 18 of the Safety Rules and General Rules was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement System File C-94-D070-10/MWA94-06-01AB).
2. The claim as presented by Assistant Chairman R. I. Nickens on January 24, 1994 to Division Superintendent R. Stevens shall be allowed as presented because said claim was not disallowed by Division Superintendent R. Stevens in accordance with Rule 42.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, this claim shall be allowed as presented."

OPINION OF BOARD:

In August, 1989, Track Inspector W.C. Saathoff (Claimant) was dismissed for violation of Agreement Rule 'G', a fact pertinent to this dispute. Upon completion of a rehabilitation program, Claimant was granted a leniency reinstatement, at which time he agreed, in full, to the following:

"I understand that this Rule 'G' violation will be part of and will remain on my personal record. I also realize and acknowledge that a second proven Rule 'G' violation that occurs within the last ten years will result in dismissal with no opportunity for re-employment.

I waive my right to any claims as a result of my violation of Rule 'G'."

Approximately four (4) years later, on the morning of October 13, 1993 Carrier Roadmaster Heidzig, Claimant's supervisor, had a meeting with a representative of the Buckskin Coal Mine near Gillette, Wyoming to inspect a new right-of-way where Carrier intended to build track for service into the Buckskin Mine. The Roadmaster asked three (3) crew members, whom he anticipated would be involved in the project, to accompany him to the meeting; Claimant was among the group.

As they traveled to the meeting, the Roadmaster noticed a "foul odor", which he believed to be alcohol. After the meeting, when the four men returned to the depot in Gillette, the Roadmaster asked the three (3) employees come into his office. The Roadmaster again detected the smell of alcohol and opted to

interview each of the employees individually, whereupon he determined that the smell of alcohol was emanating from Claimant. When the Roadmaster solicited a second opinion from Trainmaster Harrison, he concurred.

The Roadmaster advised Claimant that he was going to "be tested", and could submit to either a urinalysis or blood test. Some twenty (20) minutes later, Claimant stated that he would submit to a urinalysis, and requested that his Union Representative be called. Carrier dispatched someone to summon the Representative, who was working some thirteen (13) miles away.

In the meantime, Claimant was transported to the hospital, and asked, for a second time, if he would like to submit to a blood test, or a urinalysis. Claimant again opted for the latter, submitting a urine specimen at approximately 12:30 p.m. Claimant's representative arrived shortly thereafter.

The Roadmaster, Trainmaster, Claimant's representative and Claimant then returned to Gillette. At approximately 1:30 p.m., after conferring again with his representative, Claimant requested a blood test. There is no dispute that Claimant was told, by Messrs. Harrison and Heidzig, that the blood test would be "expensive", and that he would have to "pay for it" himself. When Claimant made a second request for a blood test, he was again informed that the test is "expensive and you will have to pay for it yourself." Ultimately, Claimant did not undergo a

blood test. Shortly thereafter, Roadmaster Heidzig took Claimant home, and informed him that he would be withheld from service pending results of his urine test.

When each of the two (2) urine samples tested positive for the presence of ethanol, Claimant was instructed to appear for an investigation, in connection with the following charge:

"Attend investigation in the Roadmaster's Office, Burlington Northern Depot, Gillette, Wyoming, at 1p.m., Thursday, October 21, 1993, for the purpose of investigating your alleged violation of Rule 565 of the Burlington Northern Safety Rules and General Rules and Rule G of the Maintenance of Way Rules at approximately 11:55 a.m., October 13, 1993, in the Roadmaster's Office, while you were assigned as machine operator at Gillette, Wyoming."

The investigation, which was postponed on three (3) occasions, was held on November 18, 1994, and by notice dated December 1, 1993, Claimant was dismissed from Carrier's service.

From a review of the record it is clear that the Carrier presented sufficient evidence to support a finding that the Claimant violated Rule G on the date in question. Consequently, its decision to imposed discipline upon the Claimant was justified. However, it is the Board's determination that mitigating circumstances exist which justify a modification of the discipline imposed.

Therefore, Carrier is directed to return Claimant to service premised upon the following:

1. Claimant must enroll in, and complete, the Employee Assistance Program.

PLB NO. 5950

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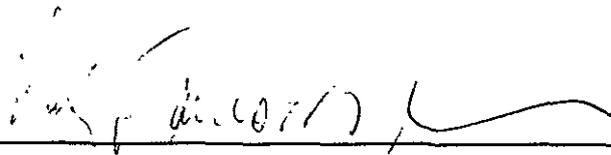
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2. Claimant must prove medically fit prior to being returned to service.

In that connection, subsequent to a thorough review of the evidence presented, we have concluded that Claimant is not entitled to the requested back pay. Therefore, that portion of the claim is denied.

AWARD

Claim sustained in part, and denied in part in accordance with the findings.



Nancy Faircloth Murphy, Chair

Dated at Memphis, New York on February 25, 1997

Mark J. Schappagh
Union Member

Dated at Syracuse, NY
on February 26, 1998

William A. Osborn
Company Member

Dated at Syracuse, NY
on February 26, 1998