

PUBLIC LAW BOARD NO. 6102

Award No. 6

Case No. 6

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes
and
Burlington Northern Santa Fe Railway
(Former St Louis - San Francisco Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when on January 15, 1996, Mr. W. R. Johnson was dismissed from the service of the Carrier for theft of company property.
2. As a consequence of the Carrier's violation referred to above, Claimant should be reinstated to service, paid for all time lost, and the discipline shall be removed from his record." [Carrier's File MWC 96-04-26AA. Organization's File B-1403-4].

FINDINGS AND OPINION:

Upon the whole record and all the evidence, the Board finds that the Carrier and Employees ("Parties") herein are respectively carrier and employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction over the dispute herein.

The Claimant, Mr. William R. Johnson, was first employed as a Trackman in the Carrier's Maintenance of Way Department in 1974. At the time of his dismissal from the Carrier's service, he was occupying the position of Track Foreman, Track Gang 331.

On January 12, 1996, the Claimant told his immediate supervisor, Roadmaster M. J. Brown, that he was having trouble with addiction to crack cocaine, and expressed a desire to be admitted to the Carrier's drug rehabilitation program, through the Carrier's Employee Assistance Counselor. During the course of their conversation, the Claimant admitted that his addiction was so severe he had resorted to theft to support his drug habit. That admission led Mr. Brown to inquire about a rail saw that was missing from a Carrier vehicle. The Claimant confessed he had taken the saw and pawned it for \$200. (Mr. Brown stated the saw's value was \$2,400).

Mr. Brown made arrangements for the Claimant to report back to his office on January 15, at which time he was given a written notice of his dismissal from the Carrier's service for alleged theft of company property. The Parties' Agreement permits an employee

plb6102.6

RECEIVED

MAY 18 1998

to be disciplined without an investigation; however, if an investigation is timely requested, it must be afforded, and a precise statement of the charges must be provided in writing.

The Claimant was then taken to the Assets Protection Office where he gave a written statement, reading as follows:

"My name is William R. Johnson. I work for Burlington Northern Santa Fe railroad. I am a crack cocaine addict. How & why I got that way I don't know. I have been stealing from the railroad to help support my habit. I have never stole when I was straight, only when I was using. The reason I am here now is I want to quit. I want it to be over with. I see other people with their families laughing & having a good time & I haven't been happy in years. I need help. I am willing to cooperate in any way I can. I am very sorry for what I've done and will make amends any way I can. I have stolen 2 rail saws, three weed eaters, two beepers, 1 radio, three chains & 1 jack. I pawned them at Ed's Pawn Shop in Watson, Miss. with Eddie." [Underscoring in original].

The Assets Protection Department had the Claimant arrested and charged with a felony theft of over \$500. The record in this case does not disclose whether prosecution was actually carried out, but the Claimant alluded to "going to jail" in a closing statement at his investigation.

The Organization's General Chairman timely requested an investigation be afforded the Claimant pursuant to Rule 91(b)(1) of the Agreement between the Parties. Such investigation was held on February 27, 1996, following two mutually agreed-upon postponements.

Mr. Brown and the Claimant were the only persons presenting testimony at the investigation. There was no significant disparity in their respective statements. Mr. Brown related the events on September 12 and 15, referred to above. The Claimant confirmed the accuracy of Mr. Brown's testimony.

The Claimant also admitted familiarity with and understanding of the Carrier's rules pertaining to dishonesty, care and use of railroad property, and proper disposition of such property. He admitted he did not comply with these rules.

The Board finds there was compliance with the applicable provisions of Rule 91, the Discipline Rule, of the Agreement between the Parties, and substantial evidence was adduced at the investigation to support the charge.

The Organization argues that the Claimant has been a good employee, but his illness caused him to do things he is working to correct. It is further argued that the Claimant's own honesty overcame his addiction and caused him to confess his problem and acts resulting therefrom.

The Carrier argues that theft of company property is a serious offense warranting dismissal; and that although the Claimant attributed his thefts to his cocaine addiction, that is not an acceptable reason to steal from anyone.

The Board does in no way condone dishonesty in the theft of property from any party and its conversion for personal gain. Employees must be trustworthy. We agree that addiction is not an acceptable extenuation. Dismissal is not an excessive penalty for such breach of trust.

Having said that, the Board takes notice of several factors. (1) The Claimant had more than 21 years of service at the time of his dismissal with only three disciplinary entries. (2) The Claimant voluntarily approached his supervisor to confess his addiction and admit he had resorted to theft. (3) He readily admitted theft of a rail saw and other equipment. (4) He had been a "good employee" and was "very remorseful," according to Mr. Brown, who also stated he had no reason to suspect the Claimant had such personal problems. (5) The Claimant, after his dismissal, had obtained other gainful employment and undertook treatment for his addiction at his own expense.

In consideration of the above factors, the Board believes the Claimant merits one last chance, subject to the stringent conditions detailed below. The Board understands that the Claimant was not charged with nor disciplined for violation of the Carrier's rules pertaining to use of alcohol, intoxicants, narcotics, marijuana, or other controlled substances. However, the Claimant's cocaine addiction is perceived to be the dominant influence in his acts of dishonesty, and his last chance opportunity to regain employment and self-respect must require zero tolerance of substance abuse.

The Carrier shall offer reinstatement to the Claimant, with seniority unimpaired, but without pay for lost time, subject to the following conditions:

Condition 1. The Claimant must be able to pass the customary, ordinary, return-to-work physical examination.

Condition 2. The Carrier's Employee Assistance Counselor must be satisfied that the Claimant is abstaining from alcohol and other substances prohibited by the Carrier's rules.

Condition 3. Recognizing that relapse in cases of cocaine addiction is not at all uncommon, the Claimant will be subject to random alcohol and drug tests at any time or interval for a period of five (5) years from date of reinstatement.

Condition 4. The Claimant shall actively participate in an appropriate drug dependency support organization or program for a period of five (5) years from date of reinstatement, such participation to be monitored for compliance by the Carrier's Employee Assistance Counselor. The Carrier may reduce such period at its discretion.

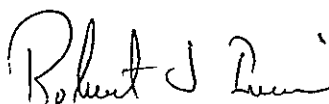
Condition 5. After reinstatement, the Claimant will be subject to such discipline as the Carrier deems appropriate for any act of dishonesty, or any violation of Carrier's rules pertaining to use of alcohol, intoxicants, narcotics, marijuana, or other controlled substances. This condition, however, does not diminish the Claimant's due process rights under Rule 91 of the Parties' Agreement, nor the Carrier's burden of proof to support its charges.

Condition 6. In the event a physician prescribes a narcotic or other controlled substance, it will be the Claimant's responsibility to inform the physician of his cocaine addiction and ascertain whether non-addictive drugs may be substituted. If the physician nonetheless prescribes a narcotic or other controlled substance, the Carrier's Employee Assistance Counselor or Medical Review Officer must be advised, in order to determine whether the Claimant may continue in service while taking such prescribed drug.

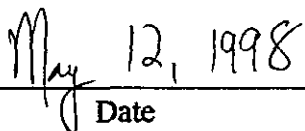
Condition 7. These conditions shall be entered into the Claimant's personal record, for reference in any future disciplinary action.

AWARD

Claim sustained in accordance with the Opinion. The Claimant shall be offered reinstatement to service within sixty (60) days from date of this Award, subject to successfully meeting Conditions 1 and 2, above.



Robert J. Irvin, Referee


Date

RECEIVED
MAY 26 1998
Chicago Office - BMW