

Public Law Board No. 6204

Parties to Dispute

Brotherhood of Maintenance of Way
Employees

vs

Burlington Northern Santa Fe

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Case 14/Award 14

Statement of Claim

1. That the dismissal of B&B Carpenter T. L. McBride for his alleged refusal to submit to a drug and alcohol test on June 5, 1998 was without just and sufficient cause, based on an unproven charge and in violation of the Agreement.

2. The dismissal of B&B Carpenter T. L. McBride for his alleged insubordinate and quarrelsome behavior and his alleged failure to comply with instructions on June 5, 1998 was without just and sufficient cause, based on an unproven charge and in violation of the Agreement.

3. As a consequence of the violations referred to in Parts (1) and (2) B&B Carpenter T.L. McBride shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

Background

The Claimant received two Notices of Investigation. The first advised him to attend an investigation to determine facts and place responsibility, if any, in connection with alleged insubordinate and quarrelsome behavior and failure to comply with instructions on June 5, 1998 while working as a B&B Carpenter at the Carrier's Alliance Diesel Facility, Alliance, Nebraska. The second Notice dealt with his alleged refusal to submit to drug and alcohol testing also on the date of June 5, 1998. Both investigations

were scheduled for the same date of June 12, 1998. Because of the facts of this case these Notices they were combined into one case before this Board. After separate investigations were held the Claimant was advised that he had been found guilty as charged and he was dismissed from service on both counts. After an appeal was filed by the Organization in the proper manner under Section 3 of the Railway Labor Act and the operant Agreement up to and including the highest Carrier **officer** designated to hear such these two claims were docketed before this Board for **final** adjudication.

Discussion

The events involved in this case took place within a relatively short period of time on the date of June 5, 1998. To properly understand both of the Notices sent to the Claimant it is necessary to understand the fall sequence of events which took place on the morning of June 5, 1998.

The Claimant holds classification as First Class Carpenter. After the Claimant arrived at work at about **7:50 AM** on June 5, 1998, according to his own account which is not disputed, he and a fellow Carpenter were busting concrete out from between tracks. **After** busting the concrete and loading it onto a vehicle they were waiting for a welder to come and weld some angle irons. At that time, by his own admission, the Claimant left the immediacy of his own job site prior to break time which was at **9:30 AM** and walked over to the C Fab Welding Shop and had a conversation with his father who worked in that shop. This was about 9:00 AM. The consensus of witnesses is that this took some 15

minutes or so. When the Claimant went back to the job site at about 9: 10 AM he had a can of pop in his hand. At that point the Claimant was approached by the Manager of Budgets. The Claimant was told that he was not to attend to personal business on work time, and that he was not to drink pop while on the job. The Claimant was told that he had to clear it with his Foreman prior to leaving the work site in the future.

Later that morning the Claimant was approached by his Foreman who upon instructions from the Manager of Budgets told the Claimant that he was to take responsibility for his actions. The Claimant testified that the Foreman also started making other accusations to him about his behavior and he became very upset over this. There is no dispute over the facts that the Claimant walked away **from** the job site to get away **from** the Foreman, as he intimated at the investigation. He says he did this in order to avoid doing something he might regret having done. He also did this in direct contravention of what he had just been told which was not to leave the job site without permission. The Claimant went to the C Building again, he testified, for some five minutes to cool down. He then went back to his job site. The Foreman then approached him and instructed the Claimant to go and see the Manager of Budgets. According to the Claimant he told the Foreman that he did not think this was a good idea without union representation. According to the Foreman the Claimant simply refused an order. The Claimant then went to the lunch room where he was found by the Manager who had been alerted of the Claimant's behavior by the Foreman. At that point the Manager told the Claimant that he was to submit to a drug and alcohol screen because he was acting

erratically. After first questioning the Manager about why he wanted him tested, the Claimant then refused to take a drug test.

Findings

There is no dispute of facts in this case. The Claimant walked off the job twice, albeit for very short periods of time on the date of June 5, 1998. Once he did it on his own to engage in personal business talking with his father who also works for the Carrier at the same location, and to get a can of pop. The second time he left his job site was because of what was obviously a personality **conflict** between he and his Foreman. In both the one case and the other the Claimant was in the wrong in leaving the job. The Carrier did not charge the Claimant for leaving the job site the first time., The Notice of Investigation dealt with insubordination for having left the job site the second time. It also dealt with the refusal by the Claimant to obey an order of the Foreman when the latter told him to go and see the Manager. The Rule at bar is the following.

Rule S-28.13

Employees will report to and comply with instructions **from** supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

When the Claimant walked off his job site twice on the same morning, and then refused to obey an order to go and see the Manager, supervision interpreted this to mean that his behavior was erratic. Whether this meant he was under the influence of drugs or alcohol is anyone's call but supervision interpreted it that way. It was not unreasonable

for supervision to have done so. At that point the Claimant compounded his problems since he simply refused, for reasons of stubbornness as far as can be determined, to subject to a drug or alcohol test administered through the Carrier. Ironically, the Claimant went and took the test on his own through the same testing agency used by the Carrier. Nevertheless, the Claimant was in violation of Carrier's policy dealing with drug testing which states the following.

12.0

Any one or more of the following conditions will subject employees to dismissal:

(c) Refusal to provide a urine specimen or breath sample for testing when instructed under the terms of this policy or federal or state regulations unless the inability to provide is for a verified medical reason. Tampering with a urine sample by substitution, dilution or adulteration will be deemed a refusal.

On merits the Board has no alternative, in view of the evidence of record, but to rule that both of the claims in this case be denied. The Claimant was insubordinate and he refused to take a drug/alcohol screen which was administered by the Carrier.

The Board will now address the quantum of discipline. The Board may amend a discipline on basis of extenuating circumstances. In view of the facts of the instant case the Board feels impelled to give this Claimant another chance to prove his worth to the Carrier and it will rule accordingly.

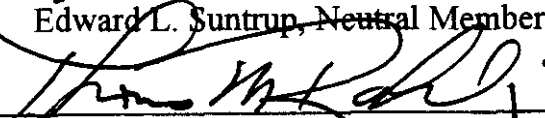
The Claimant shall be returned to work as a Carpenter in the B&B Department, without pay for time held out of service, but with seniority unimpaired. The Claimant shall be required to take a return to work physical examination in accordance with

Carrier's policy. All other relief requested in the Statement of Claim is denied.

Award

The claim is sustained in accordance with the Findings. Implementation of this Award shall be within thirty (30) days of its date. The Board holds jurisdiction over this Award until it is implemented.



Edward L. Suntrup, Neutral Member

Thomas M. Rohling, Carrier Member

Roy C. Robinson, Employee Member

Date: 7/30/01