

PUBLIC LAW BOARD NO. 1844

AWARD NO. 32

CASE NO. 37

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. Glen Graves effective December 1, 1976, was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) Mr. Glen Graves be reinstated with all rights unimpaired and paid for all time lost.

OPINION OF BOARD:

On November 12, 1976 Claimant, a machine operator who entered Carrier's service in November 1974, was working with a track maintenance gang near Dixon, Illinois. On that morning Carrier's Manager of Maintenance Operations, Mr. Berg, was at the job site observing the work. Claimant approached Mr. Berg's car, knocked on the window and asked to talk with the supervisor. Berg got out of the car and Claimant began to accuse him of making untrue and uncomplimentary remarks and spreading lies about him. After listening to Claimant and observing him, Berg asked Claimant if he had been drinking. Claimant responded in words or substance that he had consumed a lot of alcohol the night before but had not had a drink since

1 A.M. that morning. Berg thereupon telephoned Roadmaster A. J. Coleman and asked him to come to the depot to assist him with a problem. Coleman arrived at the job site and first observed and then spoke for several minutes to Claimant. Claimant likewise told Coleman that he had been drinking heavily the night before but had not taken a drink on the job. He told Coleman further that he did not think that he was under the influence of alcohol at that time.

At Coleman's request, Claimant agreed to take a breathalyzer test for alcohol by the police. But the local Chief of Police declined to administer the test apparently on the grounds that he did not want to become involved in Carrier's internal personnel affairs. Claimant then agreed, again at Coleman's request, to submit to a blood alcohol test. The two supervisors drove Claimant to the company doctor who drew a blood sample from his arm and advised that the results would not be back from the laboratory for three days. Following the drawing of the blood sample the supervisors suspended Claimant pending investigation. Later that day Claimant was served with a notice to attend a formal investigation into a charge reading as follows:

Your responsibility for violation of Rule G of the General Regulations and Safety Rules, and violation of Rule G of the Rules of the Engineering Department on November 12, 1976, while you were assigned as a machine operator on the rail gang at Dixon, Illinois on that date.

Rule G which is cited in the Notice of Charges reads in pertinent part as follows:

The use of alcoholic beverages or narcotics by employees subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on Company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on Company property is prohibited.

Following two postponements the investigation was held on November 29, 1976 following which Claimant was advised of his dismissal from the service of Carrier.

After carefully reviewing the record we conclude that there is ample evidence to support the conclusions of Carrier that Claimant was in violation of Rule G. Both Berg and Coleman testified that Claimant smelled strongly of alcohol, that his speech was slurred and that his mobility was impaired. If this is not enough, the blood test results show that Claimant had 140 milligrams of alcohol in his blood at the time the sample was taken nearly three hours after he reported for work. It is not refuted on our record that a reading in excess of 100 milligrams constitutes intoxication under Illinois vehicle and traffic law. There is no room for doubt that Claimant was under the influence of alcohol on the job on November 12, 1976. Nor is his culpability mitigated by the fact that he was intoxicated from drinking before he showed up for work rather than taking drinks on the job. As a general rule it is true that the employer may not regulate off duty conduct. One of the few exceptions to this rule, however, is where the off-duty conduct spills over into on-duty time. Carrier is within its rights to require that employees be sober when they report for work. Claimant was aware of Rule G but chose nonetheless to report for work under the influence of alcohol. The Organization suggests that the employee in Claimant's situation faces a dilemma whether to report for work possibly impaired and risk discipline or, to fail to report when impaired and face discipline for unexcused absence. We can only say that if an employee finds himself in such a position it is of his own making. Sobriety and punctuality are not excessive demands for an employer to make upon its workforce. And the employer does not have to be content with one or the other but properly may expect both from its employees.

It is not uncommon in railroading for the ultimate penalty of dismissal to be imposed for violation of Rule G. Given the proven violation in this case we cannot conclude that the penalty is arbitrary, unreasonable or capricious. We have no alternative but to deny the claim.

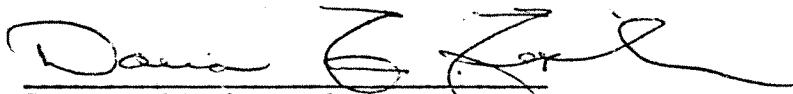
FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: Dec. 6, 1978