

PUBLIC LAW BOARD NO. 1844

AWARD NO. 67

CASE NO. 83

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 Machine Operator G.D. Jones was without just and sufficient cause and wholly disproportionate to the alleged offense.

"(2) Machine Operator Jones be allowed to return to his former position with all rights unimpaired and compensated for all lost time as a result of the violation referred to in part one (1) of this claim."

OPINION OF BOARD

At the time of the alleged violation, Claimant G.D. Jones was regularly assigned as a machine operator in the Track Department at Council Bluffs, Iowa, working from 7:30AM to 4:00PM. He was hired as a trackman on March 19, 1973. On November 16, 1978, Claimant reported for work at his usual time. At or about 10:00AM <sup>he</sup> Claimant left the property and was subsequently encountered at a nearby tavern on or about 3:20PM of the same day.

On November 17, 1978, Claimant was issued a notice to appear for hearing to determine:

"Your responsibility in connection with your actions when you were at the Dirty Thirties Bar, Avenue G, Council Bluffs, Iowa at 3:20PM on November 16, 1978 in violation of Rule G of the General Regulations and Safety Rules effective June 1, 1967."

Subsequent to the hearing, Claimant received notice of Discipline No. 148, indicating dismissal for violation of Rule G of the General Regulations and Safety Rules, as of December 15, 1978. Carrier Rule G states:

"G. 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."

Because it is undisputed on the record that Claimant was off Company property at the time he was encountered consuming an alcoholic beverage, in order for Claimant to have violated Rule G it must be shown that he was "on duty" or "subject to duty" at the time of the alleged violation.

Carrier asserts that Claimant was on duty because even if, arguendo, he received permission from Foreman Wenninghoff to lay off, the latter had no authority to grant such permission. However, the posted bulletin supposedly establishing the Roadmaster as sole authority refers only to pre-starting time lay offs due to absence or tardiness. It is apparent from a review of the transcript, moreover, that the line of authority was somewhat confused in Roadmaster A.C. Wilson's absence. The Organization argues that Claimant obtained permission from Foreman Wenninghoff as his immediate supervisor, which Mr. Wenninghoff somewhat reluctantly admits granting. Further, as the Organization points out, both Claimant and Mr. Wenninghoff testified that they believed that the Foreman had the authority to grant such permission; especially when the Roadmaster was away from his office as he was on the day in question.

We are persuaded that Carrier cloaked the Foreman with apparent authority which he exercised to authorize Claimant's absence. Carrier cannot subsequently disavow that authority and invalidate that authorization after Claimant has relied upon apparent authority to his detriment. We find that Claimant was not "on duty" on the afternoon of November 16, 1978. Accordingly the finding of a Rule G violation was in error and the claim must be sustained.

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 violated.

AWARD

The claim is sustained. Carrier is directed to comply with this Award within thirty days of issuance.

  
Dana E. Eischen, Chairman

  
H.G. Harper, Employee Member

  
R.W. Schmiede, Carrier Member

Dated: March 25, 1980