

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 Trackman R. A. Diamond was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File D-11-3-285)"
- "(2) Claimant Diamond be reinstated with all rights unimpaired and compensated for all lost time commencing on November 17, 1978, the date removed from service, as a result of the violation referred to in part one (1) of the claim."

OPINION OF BOARD:

Claimant R. A. Diamond was employed by Carrier as a track laborer in the section gang at Council Bluffs, Iowa. His regularly assigned hours were 7:30 A.M. to 4:00 P.M., Monday through Friday, with thirty minutes for lunch. On Thursday, November 16, 1978, Claimant was working under Foreman Wenninghoff, operating a Tractair. At approximately 10:00 A.M. Claimant left his assignment under circumstances in dispute in this case. He was subsequently encountered in a nearby tavern at about 3:20 P.M. by Roadmaster A. C. Wilson and General Track Inspector S. Hanges. At that time Claimant was drinking a beer.

On November 17, 1978 Claimant was notified by Carrier to appear for an investigation into

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

As a result of this investigation, Claimant received notice of dismissal as of December 15, 1978.

As in the companion case No. 83 (Award No. 67), the validity of the Rule G violation turns upon the validity of Claimant's absence from duty. Unlike the Claimant in Case No. 83, Mr. Diamond did not ask or receive explicit permission from his foreman to be absent. He did inform the foreman of his desire to leave and in the absence of direct response "assumed" that he had received permission. We cannot determine with reasonable certitude that Claimant manipulated the situation. Several witnesses support his view that he believed, albeit erroneously, that he also had permission to leave. At best, however, Claimant was careless and indirect to the point of negligence in seeking permission to be absent. He was not without culpability on this occasion, but in the circumstances, the penalty of dismissal is excessive. The discipline will be reduced to 50 days' suspension without pay. Accordingly, he will be returned to work effective February 16, 1979 with back pay and benefits from that date forward.

FINDINGS:

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

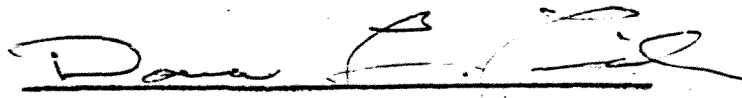
1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;

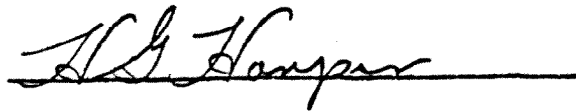
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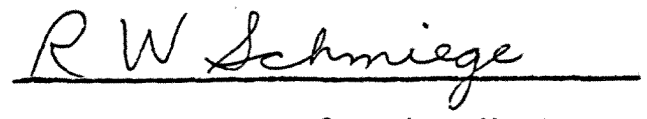
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the penalty imposed was excessive.

AWARD

The claim is sustained to the extent indicated in the Opinion. 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