

PUBLIC LAW BOARD NO. 1925

Award No. 13

Case No. 13

File No. MW-77-17

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Pacific Transportation Company  
-Texas and Louisiana Lines-

Statement of Claim: 1. Carrier violated the effective Agreement on November 12, 1976, by unjustly dismissing Laborer Percy Page, on charges of violation of Rule "G" without proving such charges.

2. Claimant Laborer Percy Page be returned to Carrier's service with pay for all time lost, and with seniority, vacation and other rights unimpaired.

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 23, 1977, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, a Laborer on Extra Gang 202 on the Houston Division was dismissed from service November 15, 1976, for violation of Rule "G," involving the use of alcoholic beverage and being under the influence thereof, because Claimant had reported for duty in that condition November 12, 1976.

The hearing requested and granted caused no change in the discipline imposed.

Said Rule "G," in part, provides:

"The use of alcoholic beverages, intoxicants...by employees subject to duty,...or being under the influence thereof while on duty or on Company property is prohibited..."

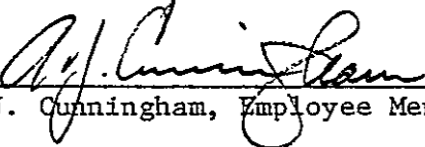
Claimant was accorded due process. He was properly notified, capably represented, faced his accusers, participated in the cross-examination of witnesses and exercised his right of appeal.

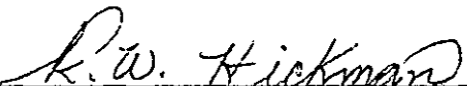
There was no substantive error to act as a bar to a review of the merits of this case. The transcript reflects that sufficient credible and competent evidence including Claimant's admissions, and was adduced to support Carrier's conclusion as to Claimant's culpability. It has been long held that the testimony of laymen as to the condition of a fellow employee is considered competent testimony. Claimant's admission of drinking before going on duty is most damaging to his case. The Board notes that the issue here involves a Rule "G" violation on November 12, 1976. Hence, it is not necessary to determine whether or not Claimant was "drunk" but rather whether he had used intoxicants. Claimant admitted that he had.

The Board does not find that dismissal for a Rule "G" violation is unwarranted, arbitrary or unreasonable discipline. The claim as

made is denied. However, the majority of the Board recommend that Carrier give consideration to granting this young man, who has been out of service now for some ten (10) months another opportunity. If it is deemed that Claimant is worthy thereof, he should be reinstated with seniority rights unimpaired but without pay subject to passing the usual return to service physical examination.

Award: Disposed of as per findings.

  
A. J. Cunningham, Employee Member

  
R. W. Hickman, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Falmouth, Massachusetts, September 7, 1977.