

PUBLIC LAW BOARD NO. 2206

AWARD NO. 43

CASE NO. 43

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Machine Operator R. A. Schmidt and Helper W. D. Downey November 16, 1978, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File P-P-414C).
- (2) Machine Operator R. A. Schmidt and Helper W. D. Downey be reinstated with all seniority and other rights unimpaired and be compensated for all time lost.

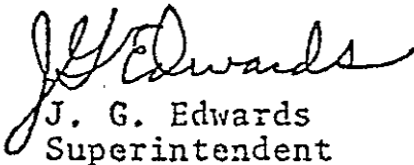
OPINION OF BOARD:

In October 1978 Claimants were Machine Operators working with the brush-cutting machine near Warrenton, Oregon, with regular assigned hours between 7:30 AM and 4:00 PM. As a result of an incident occurring during their working hours on the afternoon of October 6, 1978, Claimants were arrested by Warrenton police officers and pled guilty to a charge of furnishing liquor to minors. Upon learning of this on November 3, 1978, Carrier issued a notice of investigation to Claimants on November 7, 1978, reading as follows:

Attend investigation in the depot, Astoria. Oregon, at 1:00 PM, Monday, November 13, 1978, for the purpose of ascertaining the facts and determining your responsibility in connection with your alleged violation of Rule G, absenting yourself from duty without proper authority, falsification of time return, transporting unauthorized persons in company vehicle and having firearm in possession while on duty October 6, 1978, near Warrenton, Oregon.

Arrange for representative and/or witnesses if desired in accordance with governing provisions of prevailing schedule rules.

Please acknowledge receipt by affixing your signature in the space provided on copy of this letter.



J. G. Edwards
Superintendent

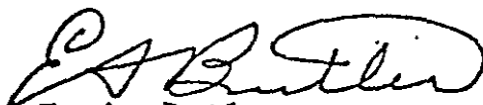
EAB:pd

cc: Mr. S. R. Walster

Following that investigation, Claimants were notified on November 16, 1978 of their dismissal from Carrier's service, as follows:

This is to advise you that effective this date you are hereby dismissed from the service of Burlington Northern Inc. for violation of Safety Rules G, 661, 663 and 665 for possession and use of alcoholic beverage, absenting yourself from duty without proper authority and falsification of time return on October 6, 1978, as disclosed by investigation accorded you November 13, 1978.

Please acknowledge receipt by affixing your signature in the space provided on copy of this letter and relinquishing all company property, including free transportation that has been issued to you.



E. A. Butler
Asst. Superintendent

EAB:pd

cc: Mr. S. R. Walster

The Organization subsequently appealed the discipline on the grounds that the hearing was not timely held and that the discipline of termination was unreasonably harsh for the misconduct engaged in by Claimants.

So far as the record shows, Carrier management had first knowledge of the alleged misconduct of Claimants when it received the police department report on November 3, 1978 indicating that they had been convicted for furnishing liquor to a minor. The hearing notice was sent on November 7, 1978 and the investigation was held on November 13, 1978, all well within the time limits of Rule 40-A of the Agreement.

Evidence developed on the hearing transcript, including Claimants' own admissions, shows that shortly after noon on October 6, 1978 they picked up two teenage girls near Warrenton High School, where they were working cutting brush. Claimants left the job at about 2:45 PM with the two girls, with whom they drove on the brush cutting machine some six miles to Astoria, Oregon, where Claimant Downey's car was parked. Thereafter, still on Company time, the Claimants drove the girls to a nearby store where they purchased some beer and then proceeded to the Fort Stevens State Park where the four of them partied. At approximately 4:00 PM the inebriated girls were picked up by the Oregon State Police and one was taken to a hospital for treatment while the other was returned to her parents. Claimants were apparently not apprehended at that time and they filed false time reports for eight (8) hours pay on October 6, 1978. Subsequently both sets of parents pressed charges and on October 30, 1978 Claimants each pleaded guilty in County Court to furnishing alcohol to a minor, for which they were fined \$410 each.

Based upon the foregoing evidence, Carrier found Claimants each culpable for violation of Carrier Rules G, 661, 663 and 665 and dismissed them from service. The cited Rules read as follows:

"G. The use of alcoholic beverages or narcotics by employes 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."

"661. Employees will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will, or who do not meet their personal obligations.

"663. Theft or pilferage shall be considered sufficient cause for dismissal from railroad service."

"665. Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place without proper authority."

The record shows that Claimants were guilty as charged beyond reasonable doubt. For their proven misconduct the penalty of termination cannot be deemed arbitrary, unreasonable or unusual punishment. We must deny the claim. See Awards 2-1814; 3-13175; 3-19908; 3-19162.

AWARD

Claim denied.

Walter Hodynsky
Carrier Member

F. H. Funk
Employee Member

Dana E. Eischen
Chairman

Date: 10/21/9