

NATIONAL MEDIATION
BOARD

PUBLIC LAW BOARD NO. 2269

FEB 16 9 28 AM '79

NATIONAL RAILROAD
ADJUSTMENT BOARD

Award No. 1

Case No. 3
File No. 1723 UTU-C

Parties United Transportation Union

to and

Dispute Illinois Central Gulf Railroad

Statement

of Claim: This is a request for leniency and reinstatement of Conductor M. R. Margwarth, former Chicago District Conductor, who was dismissed from the service of the ICG on November 21, 1975, and as a result of investigation conducted at Champaign, Illinois on November 25, 1975 and was dismissed by letter from Trainmaster H. L. Phipps, on November 26, 1975.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railroad Labor Act, as amended, that this Board is duly constituted by Agreement dated September 12, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, on November 21, 1975, was the Conductor of Passenger Train 381, operating Chicago, Illinois to Champaign, Illinois.

When Train 381 arrived at Champaign, it was met by three (3) carrier representatives. They observed Claimant's condition and noted the odor of alcohol on his breath, slurred speech, and claimant's unsteady gait. Claimant agreed to take an alcohol blood level test. Such check reflected a level of .17.

Claimant was given a formal investigation on the charge of a violation of Operating Rule "G". As a result thereof, Claimant was adjudged guilty as charged. He was dismissed from service as the appropriate measure of discipline on November 26, 1975 after 32 years of service.

Here, the issue is one of leniency. Ordinarily, in such circumstances, we would not interfere, leaving such matters to Carrier's discretion. However, we find circumstances in this record which serve to mitigate the discipline imposed. Claimant had thirty-two (32) years of service three years ago when discharged. He has been out of service over three years. His service record for such long service is not bad. This record reflects that Claimant has a problem.

After much deliberation, we conclude that claimant shall be conditionally reinstated to service, but without any pay for the time out of service, providing he complies with the following attached conditions. Claimant is fortunate to be employed by a progressive carrier who has instituted an Employee Assistance Program. Claimant must first join that program in order to demonstrate to Carrier and Union alike he sincerely wants to again work for Carrier. When

the Counselor of Carrier's Employee Assistance Program approves Claimant as being able to return to service, Claimant's seniority shall at that time be restored. Claimant will then be required to pass the examinations necessary for a return to service after such a long absence.

Award: Claim disposed of as per findings.

Order: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

W. H. Canty
W. H. Canty, Employee Member

E. M. Bouchard
E. M. Bouchard, Carrier Member

Dissent

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, January 15, 1979.