

Award No. 5
Case No. 22

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Louisville and Nashville Railroad Company

STATEMENT
OF
CLAIM:

1. The dismissal of Foreman E. Dolphin on the charge that he reported for duty on July 19, 1977 under the influence of intoxicants and/or narcotics was without just or proper cause and on the basis of unproven charges.
2. The Carrier shall reinstate Claimant Dolphin to service and extend to him all the other benefits and remedies proscribed in the first paragraph of Rule 27(f).

FINDINGS:

Claimant was dismissed after a hearing had been held on due notice on the basis of Carrier's findings that he was under the influence of intoxicants and/or narcotics in violation of Rule G while on duty on July 20, 1977. Claim-

2363 - sub 5

2

ant was well represented at the hearing and had fair opportunity to present his case and cross-examine. There is no indication of any prejudicial procedural error. The fact that the letter of charges incorrectly referred to July 19 as the date of the incident does not constitute a material defect; claimant was not misled or handicapped by the insertion of the wrong date.

There is evidence consisting of testimony by Gang Supervisor Jones that claimant's eyes were glassy, that he was in no condition to be on the property on the day in question, and that he was under the influence of alcohol and had a strong odor of alcohol on his breath. That testimony, although controverted by four employes, is sufficiently credible and substantial to support Carrier's findings in this matter. In line with well-settled Adjustment Board principles and practices, we will not set aside those conclusions. We are of the opinion, however, that claimant should be given another chance and will direct Carrier to offer him immediate reinstatement with seniority rights unaffected but without back pay.

AWARD:

Claimant to be reinstated without back pay.

Award to be effective within 30 days of adoption.

Adopted at Louisville, Kentucky, December 10, 1979.



Harold M. Weston, Chairman



Carrier Member



Employee Member