

PUBLIC LAW BOARD 2366

Brotherhood of Maintenance of Way Employees :
and : Award No. 83
Illinois Central Gulf Railroad Company : Docket No. 99

STATEMENT OF CLAIM

(1) The dismissal of Trackman J. H. Gambrel for alleged violation of Rule G was without just and sufficient cause and on the basis of an unproven charge. (Organization File N-45-T-84; Carrier File 1674).

(2) Trackman J. H. Gambrel shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF THE BOARD

The Claimant was charged with using an intoxicant prior to, or while, working as a Trackman. Subsequent to an investigation the Claimant was dismissed from service.

On the day in question an employee of the Carrier asserted that he detected an odor of alcohol on the Claimant's breath shortly after the lunch period.

The Foreman observed the Claimant and he concluded that there was a failure to properly perform duties. The Foreman and the Roadmaster then detected alcohol on the Claimant's breath. The Claimant was afforded an opportunity to take a blood alcohol test but he refused.

The evidence taken at the investigation shows that there was a strong odor of alcohol and slurred speech as well as unsteady gait. Moreover, there was testimony that the Claimant was observed drinking beer during the lunch period.

The Claimant denied that he had consumed alcoholic beverages within the time frame pertinent to this case and instead stated that he purchased a hotdog and a can of soda at a lounge during the lunch break. In this regard the Claimant argues that other testimony corroborates that contention.

This Board is not constituted to substitute its judgment for the Carrier's in making determinations of guilt or innocence. Rather, it is incumbent upon us to assess the evidence to assure that the determination was based on appropriate evidence. There is certainly evidence in the record to substantiate the Carrier's contention and the author of this award has ruled, in Award 20, that certain inferences may be drawn from a refusal to submit to a blood alcohol test under appropriate circumstances.

Based upon the entire record we find no basis for disturbing the Carrier's finding of guilt or assessment of discipline. We will deny the claim.

Findings

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

Claim denied.

Joseph A. Sickles
Chairman and Neutral Member

J. S. Gibbins
Carrier Member

Hugh Harper
Organization Member

3/4/86
Date