

Award No. 23
Case No. 23

STATEMENT
OF CLAIM

- "1. That the Carrier violated the terms and provisions of the current Agreement when as a result of testimony introduced and entered into the transcript record of formal hearings held on September 21, 1979 and October 23, 1979, it dismissed from its service Grinder Operator David Pagan, such action being excessive, unduly harsh and in abuse of discretion.
2. That Claimant, David Pagan, be reinstated to Carrier's service with seniority and all other rights restored unimpaired; that he be compensated for any and all wage loss he may have suffered in addition to any out of pocket expense; and that his record be cleared of any and all charges placed thereon as a result of aforementioned formal investigation."

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

In this disciplinary proceeding there is no substantial dispute with respect to the fact that Claimant herein, a Grinder Operator, was found asleep while on duty close to his job location on September 10, 1979. He was aroused by a group of three supervisors and then sent home. Claimant was notified of charges against him in connection with his allegedly sleeping while on duty and the fact that there would be a hearing held to investigate the matter on September 21, 1979. At that hearing, among other things, Claimant insisted that his sleeping on the job was caused by his taking prescribed medication for pain as a result of an earlier on-the-job injury. He claims that he took such medication prescribed by a physician on the morning in question which caused him to become drowsy and fall asleep. Following this revelation Carrier cited Claimant with violation of

Rule G and conducted an additional hearing on October 23, 1979. Based on both of the hearings, Carrier sent Claimant a letter dated October 31, 1979 dismissing him from service for the dual offenses of being asleep on duty and using medication and being under the influence thereof during a tour of duty on the same day.

Carrier insists that the evidence of the two hearings clearly establishes guilt of Claimant on both charges. Carrier points out that an employee being in the condition that Claimant was in on the day in question is quite serious and he could have caused injury to himself or to others as a result of his drowsy condition due to the drugs which he had taken. Furthermore, Carrier feels that the penalty herein was appropriate particularly in view of Claimant's prior record which included a prior dismissal for being under the influence of intoxicants. In that instance, he was reinstated to service on a leniency basis in June of 1978 after a three and a half months period of time.

Petitioner asserts that the double hearing process was a violation of Claimant's right and must be considered to be a procedural defect under the Agreement. Furthermore, Petitioner insists that the supervisor in question was aware that Claimant for some time had relied on prescribed medication due to the pain from the prior injury. Petitioner insists that based on the record of the hearing and the fact that Carrier should have been concerned about the physical condition of Claimant, the penalty imposed was excessive, harsh and in abuse of discretion.

It is this Board's conclusion that although there is no dispute with respect to the facts, the circumstances involved herein are a little unusual. First, it is highly unusual for there to have been two investigations with respect to the same incident. Furthermore, even though it is clear that Rule G does cover medications prescribed by a physician, the circumstances of Claimant taking two pain killers under doctors orders because of a work related injury deserves some consideration. While the Board recognizes the seriousness of Rule G violations and the dangers inherent in such vio-

lations, under all the circumstances and considering all the facts involved herein, the penalty imposed apparently was too harsh. It must be noted that Claimant should recognize that there will be little latitude extended to him for any related infractions in the future. In short, this is his last chance in the view of this Board. Under those circumstances, it is considered to be appropriate for Claimant now to be reinstated to his former position with all rights unimpaired but without compensation for the period in which he has been out of work.

AWARD

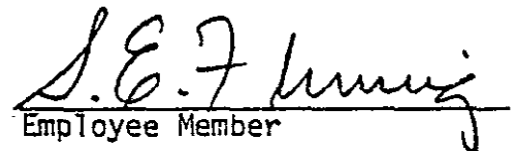
Claim sustained in part; Claimant will be reinstated to his former position with all rights unimpaired but without compensation for time lost.

ORDER

Carrier will comply with the Award herein within sixty (60) from the date hereof.



I.M. Lieberman, Neutral-Chairman


Carrier Member
Employee Member

San Francisco, CA
July 21, 1980

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