

PUBLIC LAW BOARD NO. 2556

Award No. 23

Case No. 28
File MW-373

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Railway Company

Statement

of Claim: Claim on behalf of Former Track Laborer J. E. Caldwell requesting that he be reinstated with seniority and other rights unimpaired and that he be paid for all time lost as a result of his dismissal effective July 3, 1981 for violation of Operating Rule "G".

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 Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 17, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, was formerly employed as a Track Laborer on Carrier's Track Gang at Coosa Pines, Montgomery, Alabama. He reported for duty, on July 3, 1981, under the influence of an intoxicant. Claimant's Foreman observed that Claimant was not walking right and that he smelled of alcohol. He asked Claimant what was wrong. When Claimant advised that he did not feel good, the Foreman asked Claimant if he wanted to see a doctor. The Foreman told Claimant that he was in no condition to work. The Carrier's Agent, Terminal Control, also similarly observed Claimant. They arranged for a blood test which Claimant agreed to take. The results thereof of such test verified that Claimant was under the influence of alcohol. It reflected, apparently, that Claimant had a blood level test of 0.22. Claimant was removed from service.

After an investigation held in connection with the violation of Operating Rule G, Claimant was advised that he was guilty as charged and that he was dismissed from service as discipline therefor.

Claimant was accorded the due process to which entitled.

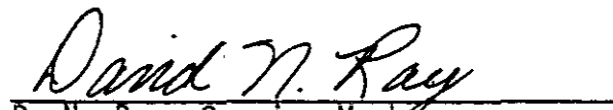
There was sufficient evidence adduced including Claimant's admissions and the blood alcohol level test, to support Carrier's conclusions as to Claimant's guilt and that Claimant was in violation of Carrier's Operating Rule G.


Claimant has been out of service over a year. In view of Claimant's unblemished service record of 12 years the Board concludes that the discipline is excessive. Claimant will be conditionally reinstated to service with all rights unimpaired but without pay subject to the following: He is to review his status with Carrier's Employee Rehabilitation Counsellor who will determine whether Claimant has an alcohol problem. Subject to passing said counsellor's examination and participation in the program and necessary medical examinations Claimant thereafter will be returned to service and placed in a probationary status for a one year period. He is reminded that any violation of such status, if proven, is sufficient cause for dismissal.

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.


Bryce L. Hall, Employee Member


D. N. Ray, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued September 10, 1983.