

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 2746

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BURLINGTON NORTHERN RAILROAD COMPANY

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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CASE NO. 9

AWARD NO. 9

Public Law Board No. 2746 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the Burlington Northern Railroad Company (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

- "(1) The holding out of service October 5, 1979, and dismissal October 15, 1979, of Machine Operator J. J. Cohen was unjust and unwarranted. (System File S-P-204C).
- (2) Claimant J. J. Cohen now be returned to service with all seniority rights and privileges unimpaired and paid for all time lost."

Claimant Jesse J. Cohen was employed by the Carrier as a Machine Operator in the Roadway Maintenance Department at Auburn, Washington. By letter dated October 5, 1979, Claimant

was directed to attend an investigation October 15, 1979, concerning his alleged violation of Rule "G". The investigation was held as scheduled. Claimant was present and chose to represent himself, waiving his right to representation by the Organization. By letter dated November 7, 1979, Claimant was informed that as a result of the investigation, he was found to be in violation of General Rule "G" of the Burlington Northern Safety Rule Book.

General Rule "G" reads as follows:

"The use of alcoholic beverages or narcotics by employees subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on company property is prohibited. Employees must not report for duty under the influence of drugs, medication or any substance, including those prescribed by a doctor or dentist that will in any way affect their alertness, coordination, response, safety, or ability to perform work properly."

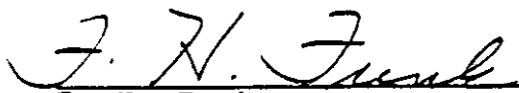
The record indicates that in the early afternoon of October 5, 1979, Claimant was observed by two officers of the Carrier to have bloodshot eyes and slurred speech. He agreed to be driven to a nearby hospital to be treated for the presence of alcohol, although there is a dispute as to whether he agreed to take a blood test, or as Claimant alleges, a breathalyzer test. In any event, upon arrival Claimant was asked to take a blood test, which he refused.

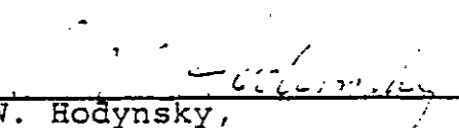
There is no question but that Claimant was on Carrier property at the time of the incident. However, the Organization


argues that he was not actually working at the time. This Board finds that being on Carrier property is sufficient to bring the requirements of Rule "G" into play. In addition, while Claimant was not actually performing work, he was in a duty status; that is, he was on paid travel time and therefore subject to the Carrier's jurisdiction. Based on the record, this Board finds that the Carrier has established by a preponderance of the evidence that Claimant was in violation of Rule "G" as charged by the Carrier.

The Organization has urged leniency, noting that there is nothing in the record to indicate that "...Claimant was not a good employe or that he had at any time been vicious." It also points out that dismissal is the harshest form of discipline, and that the Third Division has traditionally held that discipline assessed must be reasonably related to the offense. This Board concurs, but we do not view the discipline assessed as arbitrary or unrelated to the offense. If there is to be leniency, the Carrier should be allowed to make that determination, not this Board. Accordingly, this claim must be denied.

AWARD: Claim denied.

  
F. H. Funk,  
Organization Member

  
W. Hodynsky,  
Carrier Member

  
Richard R. Kasher,  
Chairman and Neutral Member