

PUBLIC LAW BOARD NO. 2774

Award No. 45

Case No. 54

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka and Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier violated the Agreement when on March 6, 1981, they suspended Plains Division Machine Operator, F. N. Quintanilla, and subsequently discharged him following an investigation conducted March 31, 1981, said suspension and dismissal being excessive and unduly harsh.
2. That the Carrier further violated the Agreement when they failed to provide the Claimant, its Representative and the General Chairman a copy of the transcript of the Investigation pursuant to Rule 13 of the current Agreement.
3. As a consequence of the violations referred to in Part 1 and 2 above, Claimant be restored to the service with seniority, vacation and all other rights unimpaired and additionally be compensated for loss of earnings account the Carrier's improper action."

FINDINGS

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 dispute, Claimant was dismissed after an investigation which was held on March 31, 1981. As an initial position, Petitioner insists that the process was flawed by the failure of Carrier to provide the Claimant and the Organization with a copy of the transcript of the investigation as provided in the Rules. From the record it appears that this oversight, which was clearly incorrect as Petitioner claims, was corrected in May of 1981. Further careful examination of the entire record indicates that the tardy furnishing of the transcript in no way prejudiced Claimant's appeal rights and it is apparent that the Carrier's error did not deprive Claimant of due process. Thus, this flaw is insufficient to sustain Petitioner's position.

The record indicates that the Claimant was charged with violation of Company rules by allegedly being careless of the safety of others, quarrelsome, being under the influence of alcoholic beverage and allegedly initiating an altercation with his Foreman. Carrier found him guilty of all of the charges at the conclusion of the investigation. The record of the investigation reveals that Claimant came to work in the morning but was alleged to have been under the influence of alcohol some six or seven hours later late in the afternoon. He admitted having had some beers, prior to going to work, and otherwise was clearly in violation of Company rules with respect to the altercation with the Foreman. The Organization points out that on the trip to the work site in the morning he was not found to be under the influence of

alcohol and there was no evidence except for suspicion and implication that he ever was under the influence of alcohol while working.

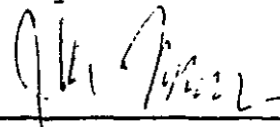
On balance, the Board concludes that the evidence produced, at the Hearing, was sufficient to support the Carrier's conclusion that the Claimant was guilty of the charges. Nevertheless, it is concluded that the penalty of dismissal, under all the circumstances of this matter, was too severe and harsh under the conditions which prevailed. For that reason, the discipline involved will be changed to a disciplinary suspension and Claimant will be reinstated to his former position.

AWARD


1. Claim sustained in part; the discipline accorded Claimant was harsh and too severe. The discharge will be reduced to a disciplinary suspension.
2. Claimant will be reinstated to his former position forthwith with all rights unimpaired but will receive no compensation for time lost.

ORDER


Carrier will comply with the Award herein within thirty days from the date hereof.



I. M. Lieberman, Neutral Chairman



G. M. Garmon, Carrier Member



S. E. Fleming, Employee Member

February 8 , 1983
Chicago, IL