

PUBLIC LAW BOARD NO. 2960

AWARD NO. 43

CASE NO. 99

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of L. A. Simburger for alleged violation of Rule G was without just and sufficient cause, unwarranted and unproven (Organization File 3D-2845; Carrier File D-11-1-468).
- (2) Claimant L. A. Simburger shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

OPINION OF THE BOARD:

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and the Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On January 11, 1982, the Carrier directed the Claimant to attend an investigation on the following charge:

"To determine your responsibility for violation of Rule "G" of the General Regulations and Safety Rules effective June 1, 1967, when on January 9, 1982, at approximately 2:30 AM you were suspected of being intoxicated while on duty."

A review of the evidence leads the Board to conclude--despite vigorous arguments by the Union--that the charge against the Claimant was supported by substantial evidence. The record reveals that at approximately 7:00 p.m. on January 8, 1982, the Claimant requested to make track inspection from Nilwood to Madison commencing at approximately midnight that evening. The Claimant accepted the call and indicated that he would report to the Benld Office at midnight. At approximately 12:30 a.m. the Assistant Foreman called the Assistant Roadmaster indicating that the Claimant had not as yet reported to work. The Assistant Foreman called the Claimant's home, only to find that the Claimant had already departed and, in fact, the Claimant arrived at the Benld Office shortly thereafter. At that time both the Claimant and the Assistant Foreman departed Benld to operate via highway to Nilwood where they set their hirail vehicle on the rail and inspected track from Nilwood back to Benld. Upon his arrival back at Benld, the Assistant Foreman again contacted the Assistant Roadmaster and indicated that Claimant had behaved in a belligerent manner and had fallen asleep while performing duties between 12:30 and 2:00 a.m. The Assistant Roadmaster was informed that the Claimant was asleep in the Carrier vehicle at the time the call was made. The Assistant Roadmaster immediately reported to the Benld Office where he found the Claimant sitting in a chair in the depot at Benld. When confronted by the Assistant Roadmaster about sleeping in the vehicle, the Assistant Roadmaster noticed a distinct odor of alcohol on the Claimant's breath. As a result, the Claimant was requested to accompany the Assistant Roadmaster to the Staunton Community Memorial Hospital where a blood test would be administered. It is noted the Claimant refused to release the results of the blood test.

The Organization also argues that even if guilty, the record, as a whole, supports their contention that dismissal is excessive. The Board agrees.

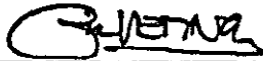
The Claimant's defense, while not exonerating on the issue of guilt, does point up elements of mitigation. When these mitigating factors are taken into consideration with other factors, the Board concludes that not only is permanent discharge excessive, but that the ofference of one more chance to the Claimant is justified.

The record contains an unrebutted assertion that, at the time of the incident, the Claimant had been without sleep for 22 hours partially because he had been working overtime for the Company. He also claims, and there is some basis to conclude, that he had consumed alcohol prior to the call to report for work. Thus, it is apparent that the Claimant's condition was influenced by his lack of rest as well as the alcohol; moreover, that his conduct was more a result of bad judgment in agreeing to report for work when requested, rather than a willful violation of the rules.

Other factors that influenced the Board were the Claimant's long service (28 1/2 years) which was free of any alcohol-related discipline and an indication in the record that the Claimant does not have an alcohol problem.

The Board, in the past, has been extremely reluctant to disturb the Carrier's findings in respect to Rule "G" cases especially where alcoholism is involved. However, there is no evidence of such a problem and there is the aforementioned factor that the Claimant's actions were less than willful violations of the rule combined with his long service. Under these unique facts and circumstances, the Board will direct the Carrier to give the Claimant one more chance.

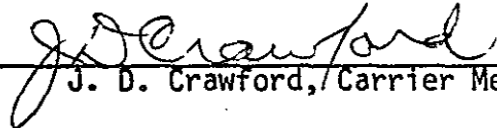
AWARD: The Carrier is directed to reinstate the Claimant with seniority rights unimpaired, however without pay for time lost within 30 days of the date of this award.



Gil Vernon, Chairman



H. G. Harper, Employee Member



J. D. Crawford, Carrier Member

Dated:

Dec. 23, 1983