

PUBLIC LAW BOARD NO. 3460

Award No. 20  
Case No. 20

PARTIES  
TO  
DISPUTE

Brotherhood of Maintenance of Way Employes  
and  
Burlington Northern Railway Company

STATEMENT  
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) That dismissal of Section Laborer, M. D. Tagata, June 12, 1980, and his being withheld from service May 13, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File S-P-225C)
- (2) Claimant Tagata be reinstated with all rights unimpaired and compensated for all time lost and all seniority rights and benefits restored."

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.

Claimant herein had been employed by Carrier on May 31, 1979. On Tuesday, May 13, 1980, Mr. Tagata was found asleep in his bed in an outfit car on company property at approximately 9:15 A.M. by company officials. Next to his bed was a half bottle of wine. He was withheld from service by telegram served on him that day for violation of Rule G. Following an investigation of the incident held on May 28, 1980, claimant was subsequently found guilty and dismissed from service. He had been charged specifically with failure to report for work at the designated time and place on May 13 and also violation of Rule G.

The Organization argues that there was no justification for removing claimant from service prior to the investigation in this instance since his alleged infraction was not serious. Additionally, it is argued that claimant was sick

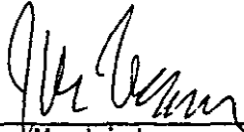
on the day in question and a breathalyzer test indicated that he had not consumed any alcohol. Even though petitioner agrees that claimant admitted that the bottle of wine was his, dismissal under the circumstances was inappropriate since he had been a good employee and he had not consumed alcohol at the time of the discovery of the situation by Carrier officials. For that reason it is argued that the discipline was capricious, improper and unwarranted under the circumstances.

Carrier maintains that claimant at the investigation admitted that he had been asleep and had not reported for duty at the time and place designated and, furthermore, admitted that he had the wine next to his bed and that it belonged to him. He admitted a violation of Rule G and also violation of Carrier's rule involving reporting to his assigned duty station on time. Carrier insists that under the circumstances withholding claimant from duty due to his Rule G violation was not only warranted by essential in this particular industry and circumstance. Further, Carrier notes that claimant's record had contained, even in his short service span, prior violations of failing to report to his assigned duty station on time. Carrier maintains that it was within its rights and perfectly appropriately dismissed claimant.

The Board finds that the record in this instance is clear in that claimant was in possession of an alcoholic beverage on Company property during working hours. Whether he consumed any of the wine at the time and whether his breath smelled of alcohol or not is immaterial under the provisions of Rule G. He was clearly in violation of that rule. He also violated the rule for failing to report to his work station on time. In view of claimant's guilt and the fact that he was a short service employee with similar infractions (with respect to not reporting to work on time) in the past, Carrier's decision to terminate him was appropriate. It cannot be deemed to have been capricious, arbitrary or an abuse of discretion. The claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman



W. Hodynsky, Carrier Member



F. H. Funk, Employee Member

St. Paul, Minnesota

May 22, 1985