

PUBLIC LAW BOARD - NO. 3514

Case 41

Award 41

PARTIES Consolidated Rail Brotherhood of Maintenance
 to Corporation and of Way Employees
DISPUTE:

STATEMENT OF CLAIM: That Gateman George Nowicki was unjustly dismissed from the service, and that he be reinstated to service with seniority and other rights unimpaired and compensated for all lost time while out of service.


FINDINGS: In this dispute, the Carrier, subsequent to an investigation, found the Claimant guilty of drinking, of being in possession of a half-full can of beer, and of wearing shoes that did not meet safety requirements in that they did not have a definite heel.

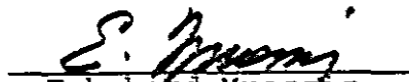
With respect to the latter portion of the charge, by the Claimant's own admission, he did not comply with the Carrier's safety rule. Turning to the Carrier's contentions concerning the possession and consumption of alcohol, while there is conflict within the testimony, the Carrier relied upon the testimony of its officials rather than that of the Claimant, to find him guilty of the charge. Given the evidence presented in the record, the Carrier's conclusions are not unreasonable and some discipline was warranted against the Claimant.

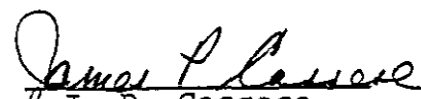
However, under the circumstances here and in consideration of the weight of the whole record, the time that the Claimant has been out of service should constitute sufficient discipline. Accordingly, the Claimant is to be restored to the service with seniority and other rights unimpaired, but without compensation for time lost while out of the service. The Claimant should understand that any further neglect of duty may subject him to permanent dismissal.

AWARD

The claim is sustained in accordance with the Findings.


F. J. Domzalski
Carrier Member


Eckehard Muesig
Neutral Member


J. P. Cassese
Employee Member

APR 11 1985