

PUBLIC LAW BOARD NO. 3530

Award Number: 76

Case Number: 76

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, W. L. Vaughan, P. O. Box 201, Dinwiddie, VA 23841, was dismissed from work on July 23, 1987, for alleged violation of Rule G. Claim was filed by the Employees in accordance with Railway Labor Act and agreement provisions. Employees request he be reinstated with pay for all lost time with seniority and vacation rights unimpaired.

FINDINGS

Claimant entered the Carrier's service in June, 1976.

By letter dated June 22, 1987, Claimant was notified to attend a formal investigation on charges that he violated Carrier's Rule G. The investigation was held on July 9, 1987. By letter dated July 23, 1987, Claimant was dismissed based on evidence adduced at the investigation which proved the charged offense.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement; and if not, what should the

remedy be.

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Claimant was assigned to a gang near Ivor, Virginia. On the morning of June 22, 1987, Roadmaster R. P. Steele set out to discuss Claimant's recent absenteeism with him. On approaching Claimant and speaking with him, Steele noticed various signs of intoxication: Claimant's breath smelled of alcohol, his eyes were bloodshot, he avoided breathing at Steele, and he retreated upon Steele's approach. On querying Claimant as to whether he was drunk, Claimant stated that he could do his job, attempted to avoid breathing at Steele and refused a blood alcohol test. Claimant was, however, speaking and walking normally. After confirming observations with Assistant Roadmaster J. L. Lowe and again attempting unsuccessfully to have Claimant submit to a blood alcohol test, Steele took Claimant out of service citing a violation of Rule G.

Rule G provides the following: "The use of alcoholic beverages, intoxicants or narcotics by employees subject to duty, or their possession or use while on duty or on Company property is prohibited."

The position of the Organization is that the Carrier has not met its burden of proving the Rule G violation and thereby has dismissed Claimant without just cause. The Organization contends there is a reasonable doubt as to whether Claimant was under the influence. It generally explains his slow movement, his retreat from Steele and related behavior as his taking care to avoid a confrontation. Likewise, the Organization cites testimony at the investigation that Claimant was performing normally and effectively.

to prove that evidence of alcohol use was insufficient. The Organization also points out that Claimant was never ordered to submit to a blood alcohol test. All this indicates that the conclusion that Claimant violated Rule G is mere speculation. The Organization challenges the discipline as an abuse of the Carrier's authority.

The position of the Carrier is that the evidence adduced at the investigation as to Claimant's behavior, appearance and smell show conclusively that he was in violation of Rule G. Further, the Carrier maintains that Claimant's refusals to take a blood alcohol test prove his guilt by the adverse inference to be drawn from that refusal. Finally, the Carrier contends the discipline applied to Claimant was not arbitrary or capricious but was fully warranted, citing its duty to protect the public and fellow employes and to maintain discipline and morale.

After review of the entire record, the Board finds that the more appropriate disposition of this matter is reinstatement without back pay.

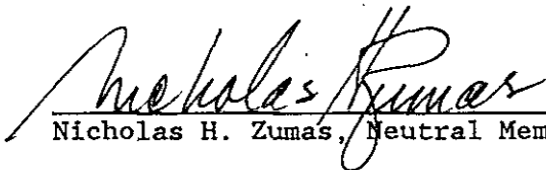
The Carrier has established through substantial credible evidence in the record that Claimant behaved in a very suspicious manner, one that is consistent with alcohol use. The Carrier has also shown that in light of its obligations to the public and employes to maintain a safe working environment and safe transportation system, the remedy of dismissal would be warranted by a Rule G violation. However, the evidence in the record indicates that dismissal is not the appropriate remedy.

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The Board notes that Claimant will most likely be required to submit to a return to work physical examination at which time drug and/or alcohol tests might be performed. Claimant should avoid the use of alcohol and other prohibited substances and consider availing himself of the Carrier's Drug Alcohol Rehabilitation Service program if appropriate.

AWARD

Claim disposed of per Findings herein.


Nicholas H. Zumas, Neutral Member


Carrier Member


Organization Member

Date: JUNE 12, 1989