

PUBLIC LAW BOARD NO. 3542

Parties  
to the  
Dispute

Pennsylvania Federation Brotherhood of  
Maintenance of Way Employees

vs.

Consolidated Rail Corporation

Case No. 25  
Award No. 8

STATEMENT OF CLAIM

(a) That R. Jacques, Foreman, employed September 23, 1974, at Roselle Park, New Jersey, be restored to service with seniority rights and all other privileges provided by either agreement or past practice. That he be compensated for all time lost until such time he is recalled to service of the railroad.

(b) That R. Jacques' record be cleared of all charges brought against him.

OPINION OF THE BOARD

Claimant R. Jacques is a Track Foreman employed by Carrier at its Roselle Park, New Jersey, Yard. Claimant was notified by Carrier to appear at an investigatory hearing into charges stemming from an April 3, 1981, incident. Those charges read as follows:

-2-

Alleged violation of followings form Conrail's Rules of the Transportation Department - Violation of General Notice - Paragraph 3 'Obedience to the rules is mandatory' RULE D Para.2 - To remain in the service, employees must refrain from conduct which adversely affects the performance of their duties, other employees, or the public. They must refrain from conduct which discredits the Company.

RULE E, para.1 - Gambling, fighting or participating in any illegal, immoral or unauthorized activity while on duty or on Company property is prohibited.

Being on Company property without proper authority.

Having alcoholic beverages on Company property.

Having unauthorized trespassers on Company property, when on April 3, 1981, at approximately 1:20 AM you were found to be at Roselle Park Yard trespassing without proper authority and had in your possession, while on company property, alcoholic beverage as shown on Roselle Park Police Reports made by Police Officer, J. Maiorelli and supplementary Investigation Reports by Police Officer, Apsley of Roselle Park Police.

A hearing into the charges was held on May 21, 1981. As a result of that hearing, Claimant was found guilty of all charges and dismissed from Carrier's service. A transcript of the hearing in this matter has been made a part of the record of this case. A review of that transcript reveals a number of points that tend to

-3-

undermine Carrier's position.

First, there is no probative evidence in this record to prove that Claimant drank beer on Company property or was in possession of alcoholic beverages of any kind while on Company property. While one might be suspicious from stories told in the hearing that Claimant may have been involved with the beer cans found in the switch shanty, mere suspicion is not a sufficient basis on which to find him guilty. Carrier's burden of proof in discipline cases requires more.

Second, Carrier's charges that Claimant engaged in activities that adversely affected his job performance and the job performance of others and brought discredit to the Company have also not been proven. In order for charges of this nature to be supportable, Carrier is required to prove them by facts and examples. The record of this case is barren of any facts to support Carrier's position on these charges.

The record, however, does contain sufficient probative evidence (direct, circumstantial, and hearsay) to support the fact that Claimant was on Company property without authority.

The question then becomes whether Claimant's guilt on this charge, in the face of Carrier's failure to prove the other charges, provides sufficient grounds on which to dismiss him. Based on the total

-4-

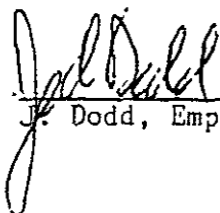
record of this case and a review of Claimant's past discipline record, this Board thinks not.

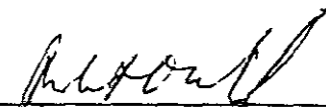
It is apparent from the past record of Claimant that he has been somewhat difficult for Management to handle. He was charged with insubordination in 1978 and failure to properly perform his duties in 1981. This record, together with his most recent rule infraction, supports severe discipline, but it does not support dismissal from service. It is this Board's position that Carrier should return Claimant to work with seniority intact but without pay for lost time or benefits. Claimant has been out of work for a sufficiently long time to impress him with the fact that he must obey the rules and follow orders in order to continue his employment with Conrail.

AWARD

Claimant shall be returned to service with seniority intact within 30 days of the adoption by this Board of the award. No back pay for lost time or benefits is awarded.

  
R. E. Dennis, Neutral Member

  
J. Dodd, Employee Member

  
R. O'Neil, Carrier Member