

PUBLIC LAW BOARD NO. 4021

Award No. 31
Case No. 27

PARTIES
TO
DISPUTE

The Brotherhood of Maintenance of Way Employees
and

The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

1. The Carrier's decision to remove Group II Trackman Dan Bahe from service, effective August 16, 1985, was unjust.
2. Accordingly, Carrier should be required to reinstate Claimant Bahe with seniority rights unimpaired, and compensate him for all wages lost from August 16, 1985.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated November 26, 1985, and has jurisdiction over the parties and the subject matter.

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Claimant was employed by the Carrier as a Trackman since 1978, and was working on the Steel Gang in early August, 1985. He did not report for duty on August 2, 1985. Since Claimant and several other members of the gang were staying in bunk cars, the Assistant Roadmaster and Assistant Foreman went to those cars, to determine the reason for Claimant's absence.

The Supervisors arrived at the bunk car at approximately 7:30 a.m., and found the Claimant reclining in his bunk. When they asked him why he was not at work, Claimant explained that his arm was sore, but that he did not desire medical attention. The Supervisors detected a strong odor of alcohol on Claimant's breath, and asked whether he had been drinking. Claimant replied that he had been drinking the previous evening.

On August 13, 1985, Claimant was notified of a formal Investigation, scheduled for August 16, 1985, charging him with the violation of several Rules, as a result of his absence from duty, and for being found under the influence of alcohol on Company property on August 2, 1985. Claimant was discharged from service as a result of that Investigation.

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The Organization raises several arguments in Claimant's defense. Claimant admits that he had been drinking heavily the night before; however, there is no evidence or assertion that Claimant was drinking on Company property or while on duty. It also makes the point that Claimant did not report for duty under the influence of alcohol, and that was the basis for his being absent on the date in question. In other words, Claimant's actions did not warrant discharge.

The record reveals that Claimant, by his own admission, had consumed "about two six-packs", ending about 2:00 a.m., and returned to the Bunk Car. The Bunk Car is Company property. It also is clear that Claimant failed to report for duty, and did not obtain permission to be absent.

Indeed, it is true that Claimant only returned to the Bunk Car because it was the only place he could sleep, and neither attempted to report for duty under the influence, nor caused any other disruption to Carrier's service. His violation of Rule 6 was relatively passive, and not of the nature in which prior Awards have warranted permanent discharge.

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The Organization also urges that the discharge was excessive, in view of the Claimant's past record. The record indicates that Claimant had considerable service with no prior discipline on his record.

The Board finds that the Claimant was guilty of being absent from duty without permission, and for being under the influence of alcohol while on Company property. The fact that Claimant was residing in the Bunk Car does not permit Claimant to occupy or use it in violation of Carrier's rules, and since Claimant chose to do so, he is subject to discipline.

However, the Claimant's alcohol-related offense consisted solely of his returning to the bunk car to sleep, as he was authorized to do, and did not involve any confrontation or work related problem. In view of this and his clear past record of service, we will restore him to service without compensation for wages lost.

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AWARD

Claimant is restored to service, with seniority and other rights unimpaired, but without pay for wages lost.

C. F. Foose
C. F. Foose, Employee Member

L. L. Pope
L. L. Pope, Carrier Member

J. R. Johnson
J. R. Johnson, Chairman
and Neutral Member

Dated: January 20, 1987

