

PARTIES TO DISPUTE: Brotherhood of Maintenance of Way Employees
vs.
Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Truck Driver, T.G. Miller, for alleged violation of Rule G of the Burlington Northern Rules of the Maintenance of Way Department was arbitrary, capricious, unwarranted and on the basis of unproven charges. (System File 10Gr MWA 83-7-28B).

2. The Claimant shall be reinstated with seniority and all others rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, Truck Driver T.G. Miller, after investigation, was dismissed for violation of Rule G. Specifically, Claimant was found guilty of being under the influence of alcohol while on duty on March 25, 1983.

Claimant reported for duty at 7:30 a.m. At approximately 10:00 a.m., several of the clerical employees working at the supply facility reported to Claimant's Section Foreman Mashek that Claimant smelled of alcohol. Mashek proceeded with Roadmaster Seeger and Special Agent Cole to question Claimant. At that time, the three Carrier officials detected the odor of alcohol, bloodshot eyes and a flushed appearance on his face. Claimant admitted that he had been drinking the evening before and was requested to submit to a urine test. He refused to do so and was removed from duty pending an investigation. By letter dated April 20, 1983 Carrier dismissed Claimant from its service

The Organization timely appealed Carrier's decision. Carrier rejected the appeal. Thereafter, the Organization advanced the claim to this Board for adjudication.

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The Organization contends that Carrier's disciplinary action was unreasonable and arbitrary. It states that Claimant's conduct and speech were not affected on that morning. The testimony presented by Cole, Seeger and Mashek merely detected an odor of alcohol; such alleged observations are not sufficient evidence to establish that claimant was under the influence of alcohol. The Organization stresses that Claimant's decision to decline the urine and blood test is not evidence to support the allegation that he was under the influence of alcohol. It further maintains that Claimant admitted that he had been drinking the prior evening and consumed his last beer at 1:45 a.m. but such does not prove guilt of the charges. It contends that there is no evidence from any of the witnesses who testified at the investigation that Claimant was observed drinking alcoholic beverages on that date. Thus, the Organization asks that the claim be sustained.

The Carrier, on the other hand, maintains that the record contains credible and convincing evidence that the Claimant in fact did violate Rule G. It states that the testimony of three Carrier supervisors offered the following observations-odor of alcohol, bloodshot eyes and flushed face. Carrier further relies on Claimant's own admission that he had admitted to drinking the entire evening before with his last alcoholic

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beverage at 1:45 a.m.; and did not dispute the testimony of any of the Carrier's witnesses. It asserts that Claimant's refusal to take a urine and blood test leads Carrier to assume that he did not take the necessary steps to defend himself. It argues that the testimony of Carrier's witnesses, Claimant's own admission supports the charges of being under the influence of alcohol. In the Carrier's view, guilt has been proven and asks that the claim be denied.

The Board has reviewed the entire transcript and we conclude that Claimant did violate rule G. Three witnesses who observed the Claimant while on duty testified that they smelled alcoholic beverages and observed Claimant's bloodshot eyes and flushed face. The witnesses are competent to testify as to the well known overt symptoms of intoxication. Moreover, Claimant admitted that he had been drinking the evening before and reported to work while in an intoxicated condition.

However, as was said at the hearing, discharge may not be appropriate here. Instead, Claimant shall be referred to the EAP. Thereafter, should he complete the program, Claimant shall be returned to service. The period of time from his discharge to return to service shall be converted to a disciplinary suspension. Claimant, once at work, is subject to the physical examinations as required by Carrier to ensure his sobriety. He must cooperate with such tests or face immediate discharge.

Accordingly, and for the foregoing reasons, the claim is

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sustained to the extent indicated in this Opinion.

FINDINGS: The Public Law Board No. 4104 upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor act as approved June 21, 1934;


That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

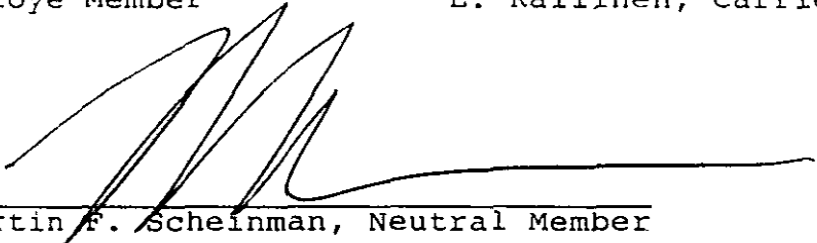
That the Agreement was violated.

AWARD:

Claim sustained to the extent indicated in the Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

July 31, 1990