

PUBLIC LAW BOARD NO. 4104

Case No. 44

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 Section Laborer J. Salazar for alleged 'violation of Rule G' was without just and sufficient cause and on the basis of unproven charges. (System File 1 Gr GMWA 85-5-17).

2. Claimant J. Salazar shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charge leveled against him and compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, J. Salazar, was employed as a Section Laborer, when he was dismissed for violation of Rule G. On March 6, 1985, Section Foreman T. Travelstead, detected the odor of alcohol on Claimant's breath. Four other Carrier witnesses went to the gang location and likewise detected the odor of alcohol. Claimant submitted to a hospital where blood/urine tests were taken and proven positive for alcohol.

As a result of this incident, Carrier conducted an investigation on March 12, 1985. On March 26, 1987 Claimant was dismissed from Carrier's service.

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

The Organization asserts that Carrier did fail to prove that Claimant was under the influence of alcohol in violation of Rule G. It states that Claimant denies that he consumed any intoxicants while on duty. Additionally, it argues that Claimant's speech and conduct were unaffected on that date and he did not exhibit any

outward manifestations of intoxicated behavior. Finally, it asserts that the two tests (blood alcohol and urine) rendered conflicting results as to Claimant's alleged intoxication, and should not be relied on as conclusive evidence. For all of the foregoing reasons, it asks that the claim be sustained in its entirety.

Carrier, on the other hand, maintains that the testimony of five witnesses who smelled the odor of alcohol establishes Claimant's guilt. It asserts that a lab report indicates a blood/alcohol content of 261 milligrams per deciliter which is considerably higher than the intoxicated level of 100 milligrams per deciliter. Under the circumstances, Carrier argues that it properly found Claimant guilty as charged. Moreover, Carrier points out that Claimant was dismissed on October 23, 1978 for a previous violation of Rule G. On July 27, 1979 he was reinstated as a matter of managerial leniency. In light of this previous offense, Carrier insists that dismissal is appropriate here. Thus, for the foregoing reasons, Carrier asks that the claim be denied.

After reviewing the record evidence, we are convinced that the claim must be denied. Carrier witnesses all testified to the fact that Claimant reported for work while under the influence of intoxicants by the odor of alcohol on his breath. The results of a blood alcohol test proved positive at a level higher than the level of intoxication. The testimony of five witnesses is completely supported by the blood alcohol test and as such concludes that Claimant is guilty as charged.

4104-44

Finally, we are persuaded that the dismissal imposed by Carrier is an appropriate penalty. His prior record included dismissal for the same offense. Under these circumstances, it was appropriate for Carrier to assess such discipline. Accordingly, and for the foregoing reasons, the claim must be denied.


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 not violated.

AWARD: Claim denied.

  
P. Swanson, Employee Member

  
E. Kallinen, Carrier Member

  
Martin F. Scheinman, Neutral Member

1/20/90