

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of)	
Way Employees)	Case No. 38
)	
vs)	Award No. 27
)	
Burlington Northern Railroad)	

STATEMENT OF CLAIM

We ask for your consideration for reinstatement of all seniority unimpaired for Mr. D. M. Fluegge.

FINDINGS

The Claimant received a notice to attend an investigation in connection with his alleged state of intoxication while covering his assignment. The Claimant was charged with violation of Rules 565 and 566 of the Carrier. Following an investigation the Claimant was dismissed. The dismissal was appealed by the Organization on property with the request that the Claimant be restored to service on leniency basis.

The following Rules apply to this case.

Rule 565

The use of alcoholic beverages...by employees subject to duty or their possession or use while on duty or on company property is prohibited.

Rule 566

Employees must not report for duty under the influence of any alcoholic beverage, intoxicant, narcotic, marijuana, or other controlled substance or medication including those prescribed by a doctor, that may in any way adversely affect their alertness, coordination, reaction, response or safety.

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The Claimant was called to work because of a derailment of four coal cars. Evidence produced at the investigation shows that he reported to cover this assignment under the influence of alcohol. The Claimant admitted this while testifying at the investigation. After the Claimant was discharged the Organization appealed this discipline. Neither the Claimant, in view of evidence of record, nor the Organization, could deny that the Claimant had a drinking problem. During the appeal process, however, the Organization requested that the Carrier give some "...consideration for reinstatement (of the Claimant) will all seniority unimpaired" because of the Claimant's inpatient status at an alcohol treatment facility. In denying this request the Carrier based its decision on a prior dismissal of the Claimant for violation of the same Rules at bar, and reinstatement for that dismissal on leniency basis. In effect, the Carrier argued that its own attempts to assist an employee with a dependency problem can go only so far, given the minimal efforts at reform present in the instant case.

The issue of a Carrier's right and obligations dealing with leniency reinstatements following a second Rule G type violations (here designated as Rules 565 & 566 on this property) has been addressed on numerous occasions by arbitral tribunals in this industry. First of all, there is no dispute over the right of Carrier's to discharge employees for Rule infractions dealing with the use of alcohol and drugs while on the job. Safety of employees is an overriding consideration here. The issue of leniency itself is solely at the discretion of a Carrier and does not fall under the purview of the jurisdiction of a Board such as this (See Public Law Board 3460, Award 46; Public Law Board 2746, Award 9; Public Law Board 3321, Award 8). It is true that the Claimant re-entered a drug treatment program a second time. Despite this, however, the Carrier has concluded that as a matter of general policy it will allow no leniency reinstatement.

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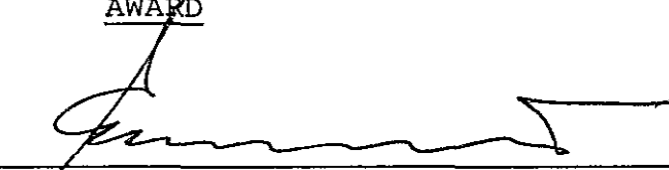
ment after a second discharge result of violation of its no drinking Rules. This Board has no authority to overturn such decision by the Carrier. Apropos here is language found in Award 8 of Public Law Board 3321 which is cited here as precedent:

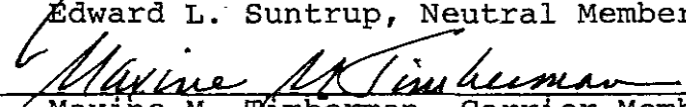
"...(In that case) the Carrier contends in order for (a) rehabilitation program to have an efficacy at all employees must understand that their participation in the program, and any subsequent failure, can only carry with it the inevitable consequence of dismissal so that employees clearly understand that they are being given "one last chance" to rehabilitate themselves and prove their worth to their employer. Claimant, by his own admission, was in violation of Rule G, had previous experience with the program, and knew its consequences. Nevertheless, he failed to live up to the standards required of him. However sympathetic we may be for a Claimant's condition, we are without the authority to intervene with the results arrived at on property".

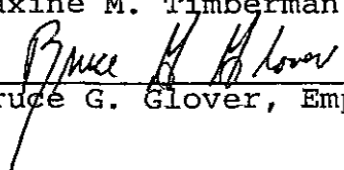
Other arbitration Boards in this industry have drawn similar conclusions from parallel fact patterns (See Public Law Board 3408, Award 35; Public Law Board 3656, Award 1). This Board cannot find sufficient grounds to diverge from the precedent found in these earlier Awards and it must accordingly deny the claim.

AWARD

-The claim is denied.


Edward L. Suntrup, Neutral Member


Maxine M. Timberman, Carrier Member


Bruce G. Glover, Employee Member

Date: _____