

PUBLIC LAW BOARD NO. 4244

Award No. 229

Case No. 237

Carrier File No. MWE980618AA

Organization File No. 10-1311-983.CLM

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

Parties to Dispute:

-and-

BURLINGTON NORTHERN SANTA FE RAILWAY

Statement of Claim:

1. The Carrier violated the Agreement when on April 29, 1998, the Carrier dismissed Mr. F. J. Villa for alleged violation of Rule 1.5 of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with his alleged failure to abide by the instructions of the Medical Employee Assistance Program, while assigned as Welder at Corwith Yard on March 23, 1998.
2. As a consequence of the Carrier's violation referred to above, Claimant's seniority shall be restored, he shall be paid for all wages lost and discipline shall be removed from his record.

INTRODUCTION

This Board is duly constituted by agreement of the parties dated January 21, 1987, as amended, and as further provided in Section 3, Second of the Railway Labor Act ("Act"), 45

U.S.C. Section 153, Second. This matter came on for consideration before the Board pursuant to the expedited procedure for submission of disputes between the parties. The Board, after hearing and upon review of the entire record, finds that the parties involved in this dispute are a Carrier and employee representative ("Organization") within the meaning of the Act, as amended.

FINDINGS

On March 23, 1998, the claimant, welder F. J. Villa, reported to the Carrier's office at approximately 8:00 a.m. in order to receive his line-up and list of duties to be performed. Roadmaster W. Merrill smelled an odor of alcohol on the claimant at this time. Subsequently, the claimant was recalled to the Carrier's office, at which time another Carrier official detected a smell of alcohol on the claimant's breath.

At approximately 10:10 a.m., Acosta Medical Services arrived to perform an alcohol and drug test on the claimant. The breathalyzer test conducted on the claimant registered a blood alcohol level of 0.01. However, the box on the claimant's drug and alcohol field test result sheet labeled "confirmed alcohol amount" was left blank. (Ex. 2). A second breathalyzer test was not administered to the claimant.

The claimant was notified by the Carrier to attend a formal investigation to determine his responsibility, if any, in connection with his alleged violation of Rule 1.5 of the Maintenance of Way Operating Rules (MWOR) and his failure to abide by the instructions of

the Medical Employee Assistance Program, while assigned as a welder at the Corwith yard on March 23, 1998. As a result of the formal investigation held on April 8, 1998, the Carrier dismissed the claimant from service. The Board sustains the claimant's discharge for the following reasons.

Rule 1.5 of the MWOR provides:

The use or possession of alcoholic beverages while on duty or on Company property is prohibited. Employees must not have any measurable alcohol in their breath or in their bodily fluids when reporting for duty, while on duty, or while on Company property.

The use or possession of intoxicants, over-the-counter or prescription drugs, narcotics, controlled substances, or medication that may adversely effect the safe performance is prohibited while on duty or on Company property, except medication that is permitted by medical practitioner and used as prescribed. Employees must not have any prohibited substances in their bodily fluids when reporting for duty, while on duty, or while on Company property.

The record reveals that there was not a confirmed level of alcohol in the claimant's system on the date at issue. (Ex. 2). A blood alcohol level of 0.01 is less than a confirmation test of 0.02, which is a violation of the Carrier's rules and medically disqualifies an employee from service, according to the Carrier's drug and alcohol policy. Here, under the Carrier's Guidelines for Specimen Collectors, a confirmed breath alcohol test result less than 0.020 is deemed negative.

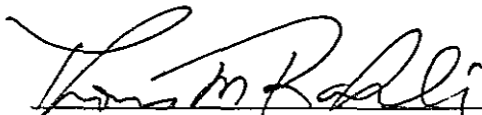
However, on March 15, 1997, the claimant violated Rule 1.5 of the MWOR. As a result, the claimant received a conditional suspension and signed an agreement with the

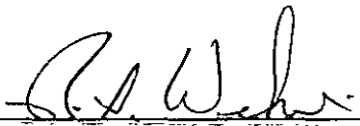
Employee Assistant Program (EAP) for Drugs and Alcohol. In this agreement, dated March 27, 1997, the claimant promised to abstain from the use of all alcohol, drugs and any mood altering chemicals. (Ex. 3). The claimant admitted at the investigation to consuming four beers on March 22, 1998, which is less than one year from the date the claimant signed the agreement of abstinence with the EAP. Other witnesses testified the claimant admitted to drinking when confronted on the day in question. The Board finds that this admission warrants the claimant's discharge for the following reasons.

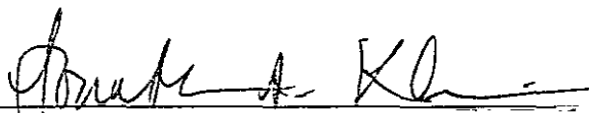
Section 12 of the Carrier's Policy on the Use of Alcohol and Drugs, dated October 15, 1996, contains clear language regarding dismissal of employees who violate the policy. Section 12 provides, in part: "Any one or more of the following conditions will subject employees to dismissal: . . . (b) failure to abide by the instructions of the Medical Department/Employee Assistance Program regarding treatment and follow-up testing." The Board finds that the claimant failed to abide by the instructions of the EAP when he consumed alcohol after signing an agreement to abstain from such use, and his breach of this condition subjected him to dismissal. Thus, the Board finds the claimant was properly discharged by the Carrier, and the claim is denied.

AWARD

The claim is denied.


Thomas M. Rohling, Carrier Member


R. B. Wehrli, Employee Member


Jonathan I. Klein, Neutral Member

This Award issued the 18th day of December, 1998.