

PUBLIC LAW BOARD NO. 4338

PARTIES) UNION PACIFIC RAILROAD COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. The dismissal assessed Extra Gang Laborer R. L. Rivera for alleged violation of various company rules as indicated in Mr. C. C. Wright's letter of November 30, 1990 was arbitrary, capricious and totally unwarranted.

2. In light of (1) above, the claimant's record shall be cleared of the discipline referred to in Part (1) and he shall be returned to service and compensated for all time lost.

FINDINGS: This Public Law Board No. 4338 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation in Grand Island, Nebraska on November 16, 1990 to determine the facts of his alleged violation occurring on October 25, 1990 at approximately 7:00 a.m. at Elm Creek, Nebraska.

The claimant was charged with arriving at work under the influence at approximately 7:00 a.m. on October 25, 1990 indicating a possible violation of Rule "G". The investigation was postponed by agreement between the parties until November 16, 1990.

L. M. Meseck, Track Supervisor, testified his gang was ready to go to work, and he had a job briefing and safety meeting. He stated when they started taking the roll, he was advised the claimant was absent. He stated they got off the bus to do exercises, and the claimant came walking up from where he had parked his car.

Supervisor Meseck testified he smelled alcohol on the claimant's breath and noticed he was walking a little erratically, so he took the claimant over to the company vehicle where Mike Kerwood was present and talked to him. Mr. Meseck testified the claimant then admitted having a beer about 4 o'clock in the morning and that Mr. Kerwood asked him how many beers he had, and he said he had one or two. He testified he took the claimant out of service and had the bus driver take him home.

M. J. Kerwood, Manager of Track Programs, testified that at approximately 7:00 a.m. on October 25 Mr. Meseck brought the claimant over to his vehicle, and they all got in. He stated he could smell alcohol on the claimant and asked him what time he had his last beer, and the claimant said at 4:00 o'clock in the morning. He testified he could smell the claimant's breath real bad in the vehicle, and

his speech was slurred a little bit. He stated the bus driver took the men to work and then returned and picked up the claimant and took him home.

The Union contends the Carrier prejudged the claimant on the basis that the charge did not allege the claimant reported for work under the influence but that the notice indicated judgment had already been passed since the charge indicated the claimant did report for work under the influence.

The charge includes indicating a possible violation of Rule "G" and to determine the claimant's alleged violations at approximately 7:00 a.m. at Elm Creek, Nebraska. Such does not constitute prejudgment.

The Union concedes the claimant testified he had one and one-half beers at approximately 4:00 a.m. in the morning prior to his being scheduled to report to work at approximately 6:30 a.m. The Union contends the evidence does not establish that the claimant was guilty as charged.

The Union also contends the Carrier introduced the discipline record of the claimant for the purpose of establishing his guilt in this case.


The Board has reviewed all the evidence of record and finds that the discipline record could only be introduced in order to determine the amount of discipline to be assessed and should not in any way have any bearing on the guilt or innocence of an employee being charged with a violation. The evidence fails to establish that the claimant's discipline record was used for the purpose of determining his guilt.

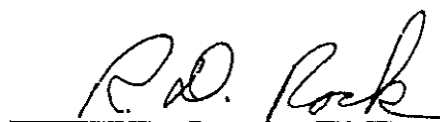
An employee with a long time service record has a great deal of consideration. However, the federal government has pointed up the seriousness of drug and alcohol use on the railroad and airline employees particularly. All railroad employees are well aware that strict observance of the rules regarding alcohol and drugs is required and violation of such rules now results in discharge for a first offense. The record indicates there have been many serious fatalities as a result of railroad employees using drugs and/or alcohol.

The evidence is sufficient for the Carrier to find that the claimant was guilty, and with a record of two previous dismissals for violation of Rule "G", there is no justification to modify the discipline assessed herein.

AWARD: Claim denied.


Preston J. Moore, Chairman


Union Member


Carrier Member