

PUBLIC LAW BOARD NO. 4640

Case No. 4

Award No. 4

Parties Indiana Harbor Belt Railroad Company
to and
Dispute International Brotherhood of Firemen & Oilers

Statement of Claim 1. That, in violation of the current agreement, Laborer, F. O'Neal, Jr., was unjustly suspended from service of the Carrier following trial held on March 23, 1989.

 2. That, accordingly, the Carrier be ordered to make the aforementioned, F. O'Neal, Jr., whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10) percent interest annually, on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

Claimant, who began service with Carrier on September 4, 1979, was on duty and under pay on May 5, 1989, working as a Laborer on the 7 a.m. to 3 p.m. shift at Carrier's Blue Island, Illinois, Locomotive Ready Track. At approximately 7:20 a.m. Claimant contacted the Manager of Locomotives, J. J. Fazekas. There was a brief discussion and during the discussion Supervisor Fazekas noted that Claimant sounded as though he was

"...under the influence of alcohol or drugs...he sounded very strange...his voice was slurred...I asked him where he was. First, he said he didn't know..."

Supervisor Fazekas then called Claimant's Supervisor and asked about Claimant's appearance. He was informed that Claimant appeared as

though he hadn't slept for several days and was acting "very tired". Fazekas then sent another Supervisor over to observe Claimant, Supervisor Love. Based upon Supervisor Love's observations, Love requested Claimant to submit to a blood and urine test which Claimant agreed to do. Claimant was taken to a local clinic, was allowed to talk to his Union Representative, submitted to the blood and urine sample, and was allowed to return to work. Claimant worked on May 6 and 7, rested on the 8 and 9 and, when he reported to his assignment on May 10, was removed from service and charged with violation of Rule 4010.

Rule 4010, in pertinent part, states:

"Narcotic (medication or drug) and/or alcoholic beverage must not be used while on duty, or within 8 hours before reporting for duty.

If necessary to use medication:

- (a) Explain to physician all of the details of work assignment, such as climbing, being on or about track, operating locomotive or being on or about train, operating or being on or about self-propelled, hoisting, vehicular or other equipment or supervising duties.
- (b) Obtain and comply with physician's advice as to performing duties if he indicates that medication contains antihistamines, barbiturates, stimulants, narcotics, tranquilizers or other such drugs.
- (c) Assure self before reporting for duty that you are not experiencing drowsiness, mental confusion, dizziness or other adverse effects that are likely to interfere with performing duties safely. If any such symptoms are experienced while on duty, immediately inform immediate supervisor."

As a result of the investigation Claimant was found culpable for the charge, was assessed a 60-day suspension, and said suspension was reduced on the handling of the property to 45 days actual suspension.

During the handling on the property there were many grounds advanced by Organization attacking the Carrier's actions in the instant claim. For the purpose of this Award we need not address each and every item raised. Suffice it to say that Carrier was within its rights to take the action that it did based upon the evidence presented to the Supervisors. The Supervisors were well-qualified to take action when presented with the appearance that Claimant gave on May 5, 1989. It is unclear why Claimant was allowed to return to work although we do not suggest or find that Carrier committed any error in allowing Claimant to return to work. All of the witnesses indicated that they had suspicions

but they had no evidence to warrant a clear conclusion as to what caused Claimant's condition on May 5, 1989. It was not learned until May 9, 1989, when a verbal report was made by the lab to Supervisor Fazekas that Carrier had confirmation that Claimant's blood/urine analysis established the fact that he was legally intoxicated on May 5, 1989. It is unclear why he was taken out of service on May 10, 1989, but, again, that is not the issue on this case.

Organization vigorously advances the appeal arguing that the handling of this incident by Carrier was unfair, prejudicial, and rife with mis-handling. The thrust of Organization's argument is that Supervisor Fazekas was the charging officer, appeared as a fact witness, and rendered the discipline. Organization asserts that such multiplicity of roles mandates a conclusion that Claimant was denied a fair handling of his grievance where the charging party was a fact witness and he subsequently passed upon his own testimony when he rendered a conclusion of culpability for the rule violation.

In support of their position Organization cites Second Division Award No. 5642 (Ritter) which, in pertinent part, held:

"...In view of the evidence, Master Carbuilder J. R. Coates; did prejudice the Claimant when he assessed the penalty after having testified at the hearing, after having investigated, after having filed the charges, and after having assisted in the prosecution."

In addition to that Award, there are a number of awards holding that the multiplicity of the rule compromises due process: First Division Award No. 10293 (Anderson); Third Division Award No. 10616 (Fansler); First Division Award No. 16699 (Leedom)

The Board is satisfied that it was not, of necessity, prejudicial for Fazekas to have been the charging officer and to have appeared as a witness. However, for him to have subsequently passed on the credibility of his own testimony and render a decision clearly mandates a conclusion that the fundamental requirements of due process were not met.

Accordingly, the Board is impelled to conclude that Carrier violated Rule 20(a) which, in pertinent part, states:

"Except during the first sixty (60) days of service, employees shall not be suspended nor dismissed from service without a fair and impartial trial, nor will an unfavorable mark be placed upon their discipline record without written notice thereof."

It is well recognized in this industry that Rule G violations are considered amongst the most serious of offenses, most often resulting in dismissal. Carrier took into consideration Claimant's prior record in this case and only imposed, originally, a 60-day suspension,

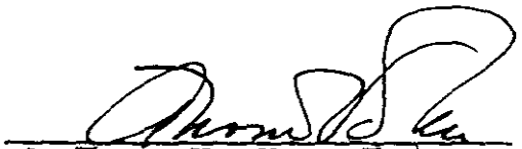
subsequently reduced to 45 days on appeal. Claimant has a poor record. It is clear that Carrier must have, or should have, been aware of the procedural defect in this case. We are not concluding in the circumstances of this case that Claimant was innocent; rather, we are concluding that Carrier failed to satisfy contractual requirements. Accordingly, the Board will direct that the claim be sustained and that Claimant's record be adjusted and he be made whole for the period of suspension according to the rule.

AWARD: Claim sustained as per findings.

ORDER: Carrier is directed to make this Award effective within thirty (30) days of date of issuance shown below.

 2-23-60
J. K. Beatty, Carrier Member


G. J. Francisco, Jr., Employee Member


A. Thomas Van Wart, Chairman
and Neutral Member

Dated: