

Supervisors and Police Officers on Patrol:

Members of the Department on Patrol Shall:

6.5 Perform independent Patrol of their assigned territory or Post as often as practical or otherwise directed.

6.6 Inspect entire Patrol area without unnecessary delay, noting any condition requiring attention or Police action.

3. Guilty

Violation of Page 3-5, Section 7.7, Patrol Duties & Responsibilities of Tour Supervisors and Police Officers on Patrol:

Members of the Department on Patrol SHALL NOT:

7.7 Permit unauthorized persons to ride in Conrail Police Cruiser Cars without securing permission from the Tour Supervisor.

SPECIFICALLY:

During your tour of duty, 2300 to 0700, May 13, 14, 1988, while on Patrol at the Baltimore Trail Van Terminal, you failed to observe exceptions to trailers EMCU 203842 & REAZ 257450, both standing alone in row 4-B, with rear doors open and eight (8) cases of merchandise on ground at rear of trailers.

Further, upon reporting for your tour of duty on May 14, 1988, at 2300 hours, you were informed of the above exceptions by Sergeant W. F. Perkins, and the locations of same. He instructed you to be on the alert for any activity in the "B" lot area of the Trail Van Terminal during your tour of duty.

From 0035 hours until 0620 hours, you did not perform proper Patrol of the "B" lot area of the terminal. Further, you failed to properly inspect trailers in rows 4-B, 5-B, and 6-B.

From 0345 hours until 0605 hours of May 15, 1988, the Trail Van Terminal clerk was a passenger with you in Conrail Police Cruiser Car C-131.

OPINION OF THE BOARD

Claimant has been an officer in the Baltimore Division of the Carrier's police force. He has been employed in that capacity for over 14 years. On the night of May 13-14, 1988, Claimant worked a shift concluding at 7:00 a.m. Claimant departed as scheduled and reported nothing unusual. At 7:15 a.m. that day, Captain Beyer inspected an area known as the "B Lot" area of the Baltimore Trail Van terminal, a temporary storage lot for a load of customer trail vans. Beyer discovered that several trailers had been broken into and items scattered. Beyer concluded that the theft had occurred prior to 7:00 a.m., when Claimant was on duty and responsible for security in the area. Accordingly, Beyer determined to conduct surveillance of Claimant's activities the following evening. As a result of this surveillance, Beyer determined that Claimant did not properly perform his duties. In addition, Beyer noted that Claimant chauffeured the Trail Van Terminal clerk in his police vehicle, which he had been specifically warned against doing five days previously by Sgt. T. J. Manager. Captain Beyer determined that Claimant's neglect of duty and transporting the clerk violated several sections of the Conrail Police Department Policy & Procedure Manual. Accordingly, on August 16, 1988 Carrier conducted a hearing. Claimant was present and represented by the Organization. As a result of the hearing, Carrier determined that Claimant was guilty as charged and assessed the penalty of dismissal.

Carrier maintains the following: Claimant is guilty as charged. The record clearly shows that he did not properly patrol an area he had been instructed to closely watch on the night of May 14 - 15, 1988. In this regard, Claimant patrolled the B Lot area from his police cruiser, when proper procedures required that it be done on foot. In addition, the Claimant admittedly chauffeured an unauthorized passenger in his police cruiser which violated direct instructions. In light of these findings, Carrier's assessment of the penalty of discharge was reasonable and it should not be set aside by the Board.

The Organization asserts as follows: There may have been some exceptions from the vans in the yard where Claimant was assigned to inspect on May 13-14, but this alone does not establish Claimant's neglect of duty. There is insufficient evidence to establish that the exceptions occurred during Claimant's shift. In addition, even if the theft occurred during Claimant's tour, it does not establish that he was negligent. Moreover, Claimant testified that he did properly inspect the Yard on the night of May 14-15, and that he did so on foot without a flashlight so as to increase the likelihood of him apprehending any thieves. While Claimant admittedly gave a ride to a Conrail clerk, it was in furtherance of official Carrier business, and reasonable under the circumstances, as the clerk asserted to Claimant that he was low on gas and both parties were concerned about a police report that a mental patient may be loose in the vicinity of the train yard. Finally, the discipline

here assessed was blatantly excessive for the alleged offenses.

The Board has determined that the claim must be sustained in part and the Claimant reinstated with one year back pay and benefits lost as a result of his termination.

Carrier has here established that Claimant violated relevant rules and regulations. More specifically, the evidence establishes that Claimant did not adequately patrol on foot the "B" lot area during his tour of duty on May 14-15, 1988. It is undisputed that proper surveillance of this area required foot patrolling. Nonetheless, he was observed patrolling only a portion of this area for a brief period of time during his tour of duty. Although Claimant contends that he did additional foot patrols without a flashlight, Beyer testified that he would have observed Claimant if he in fact did such patrolling. Moreover, it is undisputed that prior to his start of duty on May 14-15, Claimant was informed of the thefts occurring on the previous evening and told to pay close attention to the "B" lot area during his tour of duty. In addition, Claimant disregarded direct orders by transporting the Trail Van clerk in his car without obtaining permission from the Tour Supervisor when he had been specifically told within the week not to do so.

Nonetheless, the Board is persuaded by the Organization that the discipline assessed, discharge, is arbitrarily excessive in relationship to the offenses involved. The Organization correctly argues that it has not been established by substantial evidence that Claimant was negligent in his patrolling on the

night of May 13-14. Carrier cannot punish Claimant based solely on the occurrence of a bad result during his shift. Moreover, while Claimant did not patrol his assignment in the best possible fashion on the night of May 14-15, neither can it be said that Claimant did not work during this time. In addition, while Claimant did admittedly transport the Trail Van clerk, he provided some explanation for his actions in that regard.

The Organization has provided ample precedent in establishing that in these circumstances the Board has authority to reinstate Claimant and award him appropriate back pay. While the Carrier forcefully argues that no back pay is appropriate, the Board believes that reinstating Claimant with no back pay would inequitably require him to assume the full burden of lost pay for the substantial amount of time he was out of work. In addition, reinstating Claimant with no back pay would perhaps lead Carrier to believe that it could terminate other employees without careful consideration of whether the penalty assessed was commensurate with the offense. Reinstating the Claimant with one year back pay, by contrast, will appropriately require the Carrier to shoulder a financial burden for the excessive discipline yet not negate the clear message to Claimant that duties must be performed in an adequate fashion consistent with directions of superiors.

AWARD

Claim sustained in part consistent with the above Opinion.



J. H. BURTON
CARRIER MEMBER



E. R. FLAKE
ORGANIZATION MEMBER



S. E. BUCHHEIT
NEUTRAL MEMBER

FEB 14 1991