

B-1322-3
Award No. 2
Case No. 2

PUBLIC LAW BOARD NO. 5696

PARTIES
TO
DISPUTE:

Burlington Northern Railroad Company

AND

Brotherhood of Maintenance of Way Employees

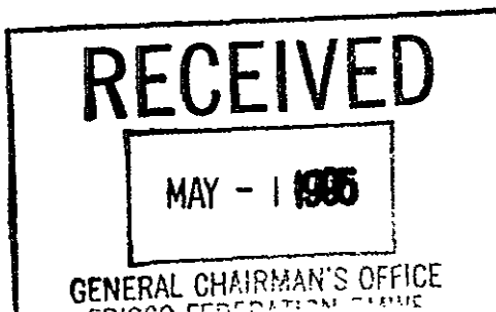
STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) Mr. Rick Hires was unjustly dismissed on October 15, 1993 for alleged violation of Rule G.
- (2) Mr. Hires shall be reinstated to his former position with all rights unimpaired and with compensation for all time lost.

FINDINGS

Upon the whole record the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.



The record indicates that Claimant was a gang foreman at the time of his dismissal. On October 15, 1993, at approximately 7:15 A.M., Claimant's supervisor observed Claimant and felt that he was under the influence of alcohol. He instructed a special agent to come to the office, and the two men both concurred that Mr. Hires had consumed alcohol, and the obvious impact of it, on his system. At that time, Claimant was offered a chance for a blood or urine test and declined, and stated that he was marking off. Claimant was considered to be a good employee, but had had a prior disciplinary incident involving violation of Rule G in 1991.

At the investigation, the special agent testified that Mr. Hires, on the morning in question, exhibited all the symptoms of being under the influence of an alcoholic beverage. He smelled of alcohol, his eyes were bloodshot and watery, and his motor functions seemed to be unsteady and unsure, according to the special agent. This was during Claimant's first hour of duty during the day at approximately 7:30 A.M. Subsequent to the encounter with the special agent and his supervisor, the Claimant was driven home in a company vehicle, since he was not permitted to drive his own vehicle due to his condition. The record also indicates that Claimant was taking a prescription drug for depression at the time of the particular incident. It should be noted that Mr. Hires had been an employee of the Company for some 25 years prior to the incident in question, and denies that he was under the influence of alcohol on the morning of October 15, and denies

being offered a blood test as well. The record also indicates that Mr. Hires had significant personal problems at the time of this incident in terms of family matters, and was under a great deal of tension. The prescription drug that he was taking for his depression was known to the management, according to his testimony, and had been approved in terms of his working while taking that drug.

In essence, Petitioner believes that Claimant was not under the influence of alcohol on the day in question, but his condition was brought on by his use of the antidepressant drug, as well as his personal stress and poor nutrition. The Organization stresses the fact that Claimant was an intelligent and safe employee who would never work while under the influence of alcohol or any other drug. In fact, when he felt things were not right with the way he was functioning, he attempted to lay off on the morning in question, but did not have the opportunity, since he was dismissed immediately.

The conclusion is inescapable in this instance that Mr. Hires had all indications of being under the influence of alcohol on the morning on which he was dismissed. Under Carrier's rules, a second Rule G violation results in permanent dismissal, and Carrier had no choice but to do so in this instance. It should be noted that it is unfortunate that good employees, such as, obviously, Mr. Hires was, sometimes suffer due to the specific and explicit contents of rules which they violate. Any mitigation of this dismissal is purely a matter for Carrier to

consider on a leniency basis and cannot be accomplished by this Board. Based on the evidence of record, there is no doubt but that Carrier was within its rights in dismissing Claimant for the second Rule G violation. The claim must be denied.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman

Stamford, Connecticut
April 27, 1995

