

PUBLIC LAW BOARD NO 5850

Award No. 27
Case No. 27

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

Carrier's decision to dismiss Central Region Maintenance of Way employee D. R. Little, effective March 25, 1996 was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from March 8, 1996. (05-23-AB/170-1312-963)

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

On March 26, 1996, Carrier directed the following letter of charges to Claimant:

"...You are hereby notified to attend formal investigation in the Roadmaster's Conference Room...at 1:00 p.m. Friday, April 19, 1996, to develop all facts and place responsibility, if any, concerning your allegedly reporting for duty under the influence of alcohol, improper use of the company radio and being quarrelsome and discourteous at approximately 5:00 a.m. March 21, 1996, at Prescott, Arizona; in possible violation of Rules 1.1, 1.5, 1.6, 2.1, 2.2, 2.4, and 2.5 of Safety Rules and General Responsibilities for All Employees, effective January 31, 1996...."

Following the Investigation held April 19, 1996, Claimant was dismissed from Carrier's service based upon the findings adduced thereat.

The scenario precipitating the dismissal evolved somewhat as follows:

On March 21st at about 5.30 a.m., Claimant's Foreman was contacted via the radio by another truck driver asking if Claimant could be off on a personal day. The Foreman refused permission based on two reasons. One, the work day for Claimant had already started and, two, the services of the truck and driver were required on that day.

The next radio transmission heard by the Foreman was "...Who the hell does this guy think he is, Jesus Christ or something?..." The above radio transmission was blurted out without following radio procedure, but the Foreman recognized Claimant's voice and knew that Claimant's truck was on the opposite side of the motel so the Foreman drove over to see what he could find.

He first saw Claimant standing along side his truck, the door open, radio mike in hand talking. It was also noted and testified to that Claimant had on the same clothes as he wore on the previous day that were in a disheveled state.

Upon approaching Claimant, he noticed a smell of alcohol, and his first query of Claimant was "Are you drunk?" Claimant responded stating, "You damned right I'm drunk."

At the Investigation, Claimant stated at one point that he doesn't drink, and later stated that in addition to a large dose of Nyquil, he did have two beers.

The evidence of Claimant's culpability for the charges assessed are overwhelming. The only matter to be reconciled is the discipline. Claimant commenced working in March of 1973. In 1975, and again in 1977, Claimant was found culpable for the same charges, violating Rule 1.5 captioned "Drugs and Alcohol" which reads as follows:

"...1.5 Drugs and Alcohol. The use or possession of alcoholic beverages while on duty or on company property is prohibited. Employees must not have any measurable alcohol on 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 medications that may adversely affect safe performance is prohibited while on duty or on company property except medication that is permitted by a 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...."

Since 1977, no other disciplinary entry appears until his dismissal in 1996.

In this instance, Claimant was contacted by phone around noon on the 21st by the Roadmaster who requested Claimant meet with him on the 25th. At that time, the Roadmaster stated he would rescind the charges if Claimant accepted full responsibility for his conduct and enter a rehabilitation program. Claimant, obviously, has refused the offer. Perhaps after being out of service since March 21, 1996, Claimant has had time to rethink his position. In any event, in deference to Claimant's years of service and experience, this Board will offer Claimant one last chance to resume his career. He must, within 30 days of being notified of this award, establish contact with a counselor and enter a rehab program. After successfully completing rehab, he will be reinstated to Carrier's service with his seniority rights intact, but without any compensation for time lost. One other condition prevails after reinstatement; for a period of sixty months, Claimant will be subject to random testing.

Should, however, the conditions of re-employment not be acceptable to Claimant, his dismissal will stand.

AWARD

Claim sustained in accordance with the Findings..

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award

favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.



Robert L. Hicks
Chairman & Neutral Member



C. F. Foose
Labor Member



Greg Griffin
Carrier Member

Dated 1/13/97