

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

)

) Case No. 22

)

) Award No. 19

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

A. L. Reichle, Carrier Member

Hearing Date: November 5, 2001

STATEMENT OF CLAIM:

1. The dismissal of Welder Christopher C. Patai for his alleged violation of Maintenance of Way Safety Rule 1.16 was without just and sufficient cause and based on an unproven charge and in violation of the Agreement System File GC-17-01/UM-24-01).
2. As a result of the violation described in Part (1) above, Christopher C. Patai shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Public Law Board No. 5905, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On July 18, 2001, Carrier notified Claimant to report for an investigation on July 23, 2001, concerning his alleged violation of Rule 1.16 on July 16, 2001. The hearing was held as scheduled. On July 27, 2001, Carrier advised Claimant that he had been found guilty of the charge and had been dismissed from service.

The Board has reviewed the record carefully. The record reveals that Claimant was clearly guilty of the infraction with which he was charged. During the morning of July 16, 2001,

Claimant was observed by a supervisor who detected an odor of alcohol on his breath or body. Claimant was taken to a testing center where the first breathalyzer test registered a blood alcohol level of .059. A second test registered .054. U.S. Department of Transportation Regulation 382.201, which applies to Claimant who held a Commercial Driver's License as a requirement for his job, prohibits such employees from performing their jobs with a blood alcohol level of 0.04 or greater. Claimant and the Organization do not challenge the test results. Carrier clearly proved the charge by substantial evidence.

However, considering the particular circumstances of this case, and without setting a precedent for future cases, the Board has determined that Claimant should be given one last opportunity to demonstrate that he can be a productive and sober employee, who complies with all of Carrier's rules. Accordingly, we shall sustain the claim but only to the following extent. We shall order Carrier to reinstate Claimant with seniority unimpaired but without compensation for time held out of service. Reinstatement shall be on a last chance basis. Any subsequent rule violation or other act of misfeasance or malfeasance, no matter how minor, shall be cause for Claimant's permanent dismissal.

Reinstatement shall also be subject to the following conditions:

- Claimant shall pass a return to work physical exam, including drug and alcohol screens.
- Claimant shall contact Carrier's EAP Program Administrator within ten working days of being notified of his conditional reinstatement. Claimant shall comply with any treatment and after care program and any other terms and conditions specified by the EAP.
- Claimant shall sign a medical release authorizing Carrier to obtain records documenting Claimant's compliance.
- Claimant shall remain drug and alcohol free. Claimant shall be subject to random, unannounced drug and alcohol tests for a period of two years following his return to work.
- Failure to comply with any of these conditions shall be cause for Claimant's permanent dismissal.

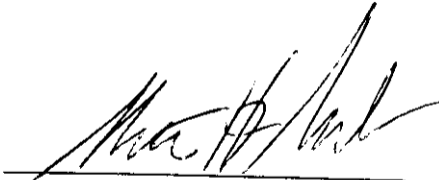
Claimant is admonished that this award does not diminish the seriousness of his violation and is further admonished of the need to correct his conduct immediately. Claimant shall have this one last chance but if he squanders it, Carrier will have the right to terminate his employment permanently.

AWARD

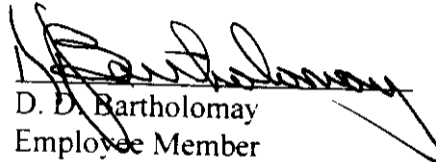
Claim sustained in accordance with the Findings.

ORDER

The Board, having determined that an award favorable to Claimant be made, hereby orders the Carrier to make the award effective within thirty (30) days following the date two members of the Board affix their signatures hereto



Martin H. Malin, Chairman

A. L. Reichle,
Carrier Member

D. D. Bartholomay
Employee Member

Dated at Chicago, Illinois, November 12, 2001.