Railroad (Carrier) Exhibit "A"

Organization's file: 515-3-CR
Carrier's file: PR-6356S

AWARD No. 268
CASE No. E-2-T

SPECIAL BOARD OF ADJUSTMENT NO. 108

PARTIES TO DISPUTE: Brotherhood of Railroad Trainmen
The Atchison, Topeka and Santa Fe Railway Company
- Eastern Lines -

STATEMENT OF CLAIM: That Conductor Norman H. Burdette should be reinstated with vacation privileges and seniority rights unimpaired.

FINDINGS: Claimant was taken out of service account violation of Operating Rules 752 and 752-A and General Rule G. Claimant was on the conductors' extra board and subject to call for duty at any time. On the date in question claimant was arrested by the highway patrol and charged with driving a car while under the influence of intoxicating liquor and placed in jail and thereafter plead guilty and paid a substantial fine as charged. During all this time he was not called for service.

At the investigation it developed that just immediately prior to his arrest by the highway patrol he had received treatment from a physician who had given him an injection of a mild sedative. There was no evidence developed at the investigation that claimant had indulged in any liquor of any kind; however, his plea of guilty to being under the influence of intoxicating liquor is indicative of the fact that he did indulge in intoxicating liquors, although there is considerable merit to his contention that he only plead guilty as an easy way to get out of the difficulty he was in. However, to give the Carrier the benefit of the doubt that he had had some intoxicating liquors, there is no evidence as to the extent of any intoxicating liquor as to whether it was sufficient to affect him materially or not.

That part of Rule 752 reading as follows:

> "They must report for duty as required and those subject to call for duty will be at their usual calling place, or leave information as to where they may be located."

is relied upon by Carrier as sustaining their findings that the rule was violated. The facts here do not indicate that there was any violation of that rule. It was not contradicted that claimant had left information as to where he could be located at any time during the time for which he was taken out of service.

That part of rule 752-A relied upon by Carrier as having been violated in this instance reads as follows:

> "They must conduct themselves in a manner that will not bring discredit on their fellow employes or subject the railroad to criticism and loss of good will."

The Board finds that no reasonable interpretation of the evidence brought out at the investigation here could by any stretch of the imagination have brought discredit on claimant's fellow employes or subjected the railroad to criticism or loss of good will.

Therefore, we must look to General Rule G, which reads as follows:

> "The use of intoxicants or narcotics by employes available for duty, or their possession or use while on duty, is prohibited."

There is no charge that claimant used intoxicating liquors or narcotics on duty, so the only part of that rule which could be involved here would be that part which says "The use of intoxicants * * * by employes available for duty, * * * is prohibited ."

It is a generally accepted position of tribunals and referees involved in the interpretation of agreements similar to this that an employer does not have control of the activities of an employe at times when he is not on duty and under pay. The fact that a man such as this claimant was on the extra board and therefore subject to call at any time, is required to be more alert and more careful of his conduct than would some employe who is only subject to call at stated times, and if his conduct is such that he does not protect himself as to make himself available and prepared for duty at any time, is a hardship that he himself must bear and seriously keep in mind.

This Board recognizes the fact that a carrier, particularly in their passenger service, having to deal with the public as passenger men do have to deal with the public, has a right to expect their employes to conduct themselves and be in such physical condition as to not bring discredit upon that service, and if there is any reasonable evidence to support the discipline of a man who is involved with Rule G there is a tendency on the part of a Board and referee dealing with this question to support the carrier to the end that they can expect the highest type of service from their employes in that service.

In this instant case the claimant was not on duty and was not called for duty. He was an employe of some fourteen or fifteen years' seniority. We are therefore concerned with the question of whether or not the discipline imposed on him was in keeping with the offense for which he

was disciplined. A man's seniority on a railroad is a very important right and most men who are denied their seniority rights are placed in an extremely unfortunate position with reference to earning a livelihood, and the courts have been very careful to guard seniority rights as a valuable property right that must not be destroyed forensically or lightly. We are of the opinion that in this case the discipline meted out to this claimant, that of taking him out of service upon very slender evidence, was much too severe in the light of the facts in this particular case. We are, therefore, driven to the conclusion that the claimant having been off duty and not called for service was not in violation of the rule nor subject to the discipline imposed.

AWARD: It is, therefore, the Award of the Board that the claim be and is hereby sustained and claimant ordered to return to service upon his application therefor within a reasonable time, subject to his ability to pass the regular physical examination for men in service.

Frank P. Douglass, Neutral Member

C. Luna, Organization Member

M. H. Coble, Carrier Member

Topeka, Kansas
March 22, 1956