

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 126
Docket No. 141
CNW File: 81-88-23

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Bridge Tender T.J. Malcore for violation of Rule G was without just and sufficient cause and excessive (Organization File 3PG-3182; Carrier File 81-88-23).
- (2) Claimant T.J. Malcore shall now be allowed the remedy prescribed in Rule 19(d)."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employees and the Carrier involved are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute herein.

On October 1, 1987, Claimant was assigned to work as bridge tender at Bridge U-104 in Green Bay, Wisconsin. During Claimant's shift, Carrier's trainmaster was sent to that bridge because of a report that the bridge tender there could not be found. Carrier's trainmaster found Claimant, questioned him, and detected the odor of alcohol. Claimant then submitted to two breath tests, yielding results of .14 and .12, respectively. Claimant subsequently was directed to attend a formal investigation of the charge:

To determine your responsibility in connection with your violation of Rule G on October 1, 1987 while working as bridge tender on Bridge U-104 at Green Bay, Wisconsin.

The investigation was held after two postponements, and a copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

This Board has reviewed the evidence and testimony in this case,

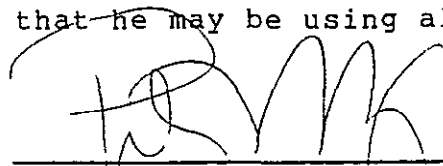
and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violation of Rule G. Because of smelling alcohol on the breath of the Claimant, the Carrier's trainmaster sent him to have breath tests, which showed positive results. Consequently, there is no question that the Claimant was guilty of being under the influence of alcohol while on the job in violation of Rule G.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find it to have been unreasonable, arbitrary, or capricious. In this case, because of the long, clean record of the Claimant and the fact that he has gone into counseling, this Board will order that the Claimant be returned to work without back pay as long as he is continuing to participate in alcohol-abuse counseling. This Board also orders that because of his problems, the Carrier can operate under the assumption that it has reasonable cause that the Claimant may be using alcohol and subject the Claimant to random testing. The Claimant is being returned to work on a last-chance basis, and any further violations of Rule G will result in no leniency from this Board.

Award:

Claim sustained in part. The Claimant is to be returned to work with a lengthy suspension and without back pay as long as he continues in alcohol-abuse counseling. The Carrier can continue to randomly test the Claimant for 2-1/2 years for alcohol since, given his previous history, there

is reasonable cause that he may be using alcohol on the job.



Neutral Member



Carrier Member



Organization Member

Date: 2/5/89