

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

Case No. 159

Award 142

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 J.D. Richardson for an alleged altercation with another employee was without just and sufficient cause and in violation of Iowa State Law (Organization File 4LF-2260 D; Carrier File 81-89-28).
2. The dismissal of J.D. Richardson for alleged violation of Rule G was without just and sufficient cause and in violation of Iowa State Law (Organization File 4LF-2261 D; Carrier File 81-89-29).
3. As a result of 1 and 2, Claimant J.D. Richardson shall be allowed the remedy prescribed in Rule 19.

FINDINGS:

Claimant J.D. Richardson was employed by the Carrier as a trackman at Grand Junction, Iowa.

On August 24, 1988, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

Your failure to properly conduct yourself on company property when you entered into an altercation at Grand Junction, Iowa, on August 24, 1988.

In addition, on August 25, 1988, the Carrier notified the Claimant to appear for a formal investigation in connection with another charge as follows:

Your violation of Rule G while on duty on company property on August 24, 1988, at Grand Junction, Iowa.

The Claimant was held out service pending investigation of the two charges, which took place on August 30, 1988. Following the hearing, the Claimant was assessed discipline of dismissal. Whereupon, the Organization filed a claim on the Claimant's behalf, challenging his

dismissal.

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 engaging in an altercation with another employee and violating Rule G by testing positive for alcohol in his system on the same date. The Claimant has admitted a great deal of his wrongdoing, and there is no question that he violated several rules on August 24, 1988.

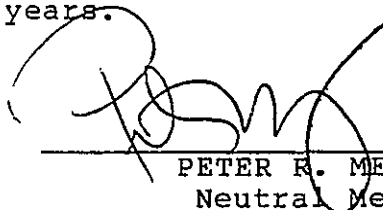
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

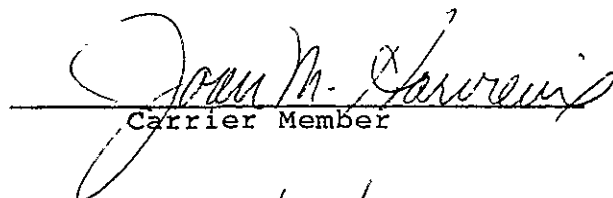
The record reveals that this is the first disciplinary incident involving this Claimant for something other than an attendance-related matter. The record also tends to indicate that the altercation may have related to the alcohol abuse on the part of the Claimant. Given the intent of the law in the state of Iowa with respect to employees who are suffering from alcoholism problems, plus the general policy of this Carrier, this Board finds that it was unreasonable and arbitrary for the Carrier to terminate the Claimant for his rule violations on the date in question. This Board orders that the Claimant must be returned to work, but not before he is placed in an alcohol rehabilitation center and successfully completes its program. If the Claimant does successfully complete an alcoholism program, he shall be returned to work, but without back pay. The Claimant should be advised that this a last-chance reinstatement, and he may be subject

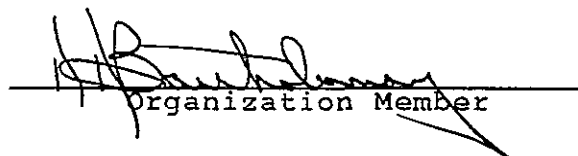
to tests for alcohol in his system for the next two years.

AWARD:

Claim sustained in part. The Claimant is to enroll in an alcohol abuse program; and if he successfully completes the program, he shall be returned to work, but without back pay. The Claimant should also be advised that he will be subject to alcohol testing from the Carrier over the next two years.


PETER R. MEYERS
Neutral Member


Carrier Member


Organization Member

Date: 12/17/90