

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 209

Award No. 181

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

1. The dismissal of Machine Operator C. H. Gildea for conduct unbecoming an employee during off duty hours was without just and sufficient cause, based on an unproven charge, capricious and excessive (Organization File 4LF-2473D; Carrier File 81-92-65).
2. Machine Operator C. H. Gildea shall now be allowed the remedy provided in RULE 19(d).

FINDINGS:

The Claimant, who was on assignment as a Machine Operator on a CAT-09 surfacing gang, was notified by the Carrier to appear for an investigation to determine whether he was guilty of using "profanities, obscenities and sexually harassing comments to the night auditor" while lodged at the Holiday Inn at Council Bluffs, Iowa on the evening of November 19 and the morning of November 20, 1991. The Claimant testified that he merely approached the front desk on the night in question and asked for a wake up call and joked around with the night auditor. He denied ever making any kind of disturbance.

Basing its opinion on statements and testimony from the night auditor, the Carrier found the Claimant guilty and subsequently, dismissed him from service.

The parties being unable to resolve the issue, this matter

comes before this Board.

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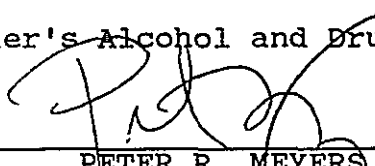
This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the guilty finding. The record is clear that the Claimant engaged in the conduct unbecoming an employee at the hotel at which he was lodged on November 19, 1991.


Once this Board has determined that there is sufficient evidence in the record to support the guilty findings, 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.

Given the lengthy seniority of this Claimant, we find that he should be reinstated on a leniency basis but without backpay. Because the record is clear that he was under the influence of alcohol on the evening in question, we order that his reinstatement be pursuant to the Carrier's Alcohol and Drug Use Policy and that he be required to comply with the requirements contained therein.

AWARD:

Claim sustained in part. Claimant shall be reinstated on a leniency basis but without backpay. He shall be required to comply with the Carrier's Alcohol and Drug Use Policy.


PETER R. MEYERS
Neutral Member


Carrier Member


Organization Member

Dated: January 27, 1994