

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 53
Docket No. 62

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 Trackman Andrew Bernardino for alleged violation of Rule G was without just and sufficient cause and excessive. (Organization File 2D-4439; Carrier File 81-84-176-D).
- (2) Claimant Andrew Bernardina shall 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 employee and the Carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

Prior to his dismissal, claimant employed as a trackman at Carrier's Hull Avenue Yard in Des Moines, Iowa. On April 6, 1984, he reported for duty at 7:30 A.M. At approximately 9:45 A.M. claimant went to the office of the Roadmaster and inquired about seeing the Company doctor. The Carrier states that the Roadmaster immediately smelled the strong odor of alcohol on claimant's breath; that the Roadmaster summoned a Lieutenant of Carrier's Police, who administered a field sobriety test, and determined that claimant was somewhat impaired. Claimant was offered the opportunity to submit to a blood alcohol test, which he consented to. The blood alcohol test was conducted at 11:05 A.M., and showed that claimant had a blood alcohol ratio .114. Under Iowa State law a driver of a motor vehicle would be considered intoxicated with a blood alcohol ratio of .100.

On April 6, 1984, claimant was directed to appear for formal investigation scheduled for April 11, 1984, on the charge:

"Your responsibility in connection with Rule G of the General Regulations and Safety Rules, effective June 1, 1967, while employed as a Trackman at approximately 9:45 A.M. at Hull Avenue Yard, Des Moines, Iowa April 6, 1984."

The investigation was postponed and conducted on April 16, 1984. A transcript of the investigation has been made a part of the record. Following the investigation, claimant was dismissed from service by notice dated April 23, 1984.

The transcript of the investigation contains substantial evidence by the Roadmaster and the Lieutenant of Police that each of them detected the odor of alcohol on claimant's breath when claimant was in the Roadmaster's office. The Lieutenant of Police gave claimant a field sobriety test, and also testified as to the result of the blood alcohol test showing a ratio of .114. Upon receipt of report of the blood alcohol test, claimant was removed from service about 12:05 P.M.

The claimant stated that he had consumed some six or seven drinks the night before, but stopped around 11:00 P.M. He denied drinking any alcoholic beverage prior to coming to work on April 6, 1984.

From our review of the entire record, we find that claimant was under the influence of alcohol at least at the time of the blood alcohol test, which the record shows was done at 11:05 A.M. We also note that near the close of the investigation, claimant's representative asked that claimant's thirty years of service be taken into consideration. Also, in the appeal on the property, the General Chairman stated:

"Mr. Bernardino has over 30 years of service without any blemishes nor problems related to alcohol, which speaks for itself..."

Considering claimant's years of service, we think that he is entitled to one more chance. We will award that he be restored to service, with seniority and other rights unimpaired, but without any compensation for time lost while out of service, provided he can satisfactorily pass such physical examination as may be required by the Carrier.

A W A R D

Claim sustained to the extent indicated in Findings.

ORDER

The Carrier is directed to comply with this Award within thirty days from the date hereof.


Carrier Member


Chairman, Neutral Member


Labor Member

DATED Oct 3, 1985