

Award No. 5  
Case No. 5

Special Board of Adjustment No. 956

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
New Jersey Transit Rail Operation, Inc.

STATEMENT  
OF  
CLAIM:

The dismissal of Trackman J. Bogash was without just and sufficient cause and his record must be cleared of charges and he should be restored to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Claimant, a trackman with about eight years service, was dismissed for (a) violating Operating Rules B and G while operating a Company bus, (b) being in possession of and consuming alcoholic beverages and (c) being insubordinate towards Supt. Wallace and Trainmaster Erdman.

Petitioner's position is that the discipline must be set aside since claimant was not afforded a fair and impartial trial and the evidence does not substantiate the charges levelled against him. Petitioner points out that claimant's record is unblemished by prior discipline.

Claimant and eight other members of his track gang

worked at Summit, N.J. from 8:30 a.m. until 2:15 p.m. They then were transported back to their headquarters at Suffern, N.Y. by a Company bus operated by claimant.

In the course of the trip back to Suffern, according to the testimony of Superintendent Wallace and Trainmaster Erdman, the bus stopped at two package liquor stores and members of the gang purchased alcoholic beverages and carried them into the bus and, in some instances, consumed them in the bus.

There is no evidence that claimant consumed or purchased an alcoholic beverage or was in possession of such a beverage while in the bus or on duty. It does appear from the record that seated immediately behind him in the bus was Trackman Bohnwagner and that he had made a purchase at one of the liquor stores and that a half consumed bottle of beer was at his feet. Seated nearby was J. Norell, another employee, who was observed, Mr. Wallace testified, drinking beer. Next to Mr. Norell was employee D. White and he had a bag, according to Mr. Wallace, containing five full, and three empty, bottles of beer. Other beer was also observed by Mr. Erdman on the bus, according to Mr. Wallace.

Mr. Erdman testified further that after Supervisor Hanson (who had been summoned in the meantime) had taken all of the employees on the bus out of service, claimant in a loud voice directed obscene comments and verbal abuse towards Mr. Erdman and Mr. Wallace.

After a careful examination of all the evidence, we credit the testimony of Mr. Erdman and Mr. Wallace. Contrary to Petitioner's contention, we also find that the record discloses no prejudicial procedural error on Carrier's part. Claimant had a fair

oppportunity to present his case.

- The obscene comments directed by claimant to his superiors may properly be considered in evaluating the propriety of the discipline. While they were not mentioned in the charges, they are part and parcel of the entire incident in question and are not a separate occurrence. There is no indication that claimant was misled in any material respect by the failure to include them in the charge or that he did not have ample opportunity to defend himself at the hearing.

We understand that the eight other employees in the bus were returned to service on a leniency basis in October 1983. Claimant did not accept reinstatement on that basis; he maintained that he was entitled to full back pay and was not guilty of any violation.

On April 3, 1984, Carrier offered reinstatement to claimant without back pay but with the right to pursue his grievance in that regard. A dispute arose, however, when he was interviewed regarding his return to work when he continued to insist, as was his right, that the discipline was unjustified. He was not allowed to return to service at that time.

On June 12, 1984 claimant's General Chairman was told that claimant could come in to the office for an interview at any time he wanted to return to service. Claimant has not reported for the interview.

It may well be that claimant sincerely believes that he was unjustly treated. However, his job was to drive the bus for the Company and not to be "a good fellow" and make stops for the other

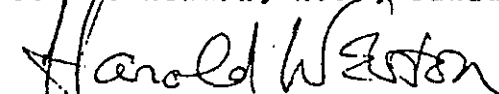
employees' purchases. Rule G violations are extremely serious and we will not interfere with Carrier's determination that he engaged in such a violation when he made the stops for other employees.


Had it not been for his irresponsible remarks to the Superintendent and Trainmaster, we would have held that he should have been returned to service before Bohnwager, Norell and White were permitted to return. Unlike those employees, he was not guilty of possession or use of the beer; had he not made the highly improper comments which no supervisor should be subjected to in the performance of his duties, we would have found disparity of treatment and awarded more back pay.

It is our conclusion that claimant should be reinstated immediately and compensated for time lost between April 3 and June 12, 1984. He should not have been withheld from service after April 3, 1984, but should have availed himself of the opportunity to return on June 12 even if he was irritated by what he considered to be mishandling during the April 3 interview.

AWARD: Claimant to be reinstated unconditionally with seniority rights unimpaired and back pay from April 3 to June 12, 1984, inclusive. To be effective within 10 days.

Adopted at Newark, N.J. January 28 1985.

  
Harold M. Weston, Chairman

  
Carrier Member

  
Employee Member