

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

"CARRIER"

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

"ORGANIZATION":

Award No. 5

STATEMENT OF CLAIM:

Claim of the Brotherhood (BMWE-86-2-F12) that:

The dismissal of Track General Helper Roosevelt Brown was without just and sufficient cause due to the Claimant's medical condition and admitted alcohol problem.

REMEDY:

Claimant Roosevelt Brown shall be placed on a medical leave of absence, and after his completion of the rehabilitation program and after he has passed his return to duty physical, the Claimant shall then be reinstated to service without loss of seniority, vacation rights, or any other benefit or privilege he enjoyed prior to his dismissal.

OPINION OF THE BOARD

Claimant, R. Brown, was discharged on December 31, 1985 for allegedly fighting with another employee and being under the influence of intoxicants and/or drugs. The Organization seeks the Claimant's reinstatement.

The arbitration hearing in this matter took place on July 3, 1987. The Claimant was present and represented by the Organization.

The basic facts are not complex. On December 20, 1985, the date of the events giving rise to this claim, Claimant was a track general helper and was working at a location designated as Philmont Yard on Carrier's railroad division. Claimant engaged in an altercation with another employee, A. Hale. Claimant suffered injuries, causing him to be taken to a hospital for treatment. Carrier officials also suspected that the Claimant was intoxicated, and therefore had him tested for drug and alcohol consumption. Claimant tested positive.

Article IV, Section 402 (Arbitration) of the labor agreement, cited by the parties, states in relevant part:

(a) If a satisfactory settlement of a grievance cannot be reached between the parties at Step Three of the Grievance Procedure, or there is a disagreement as to the interpretation, application or performance of this Agreement, the Union may, within thirty (30) days from the receipt of SEPTA's Third Step answer, request that the grievance be arbitrated....

* * * *

(i) The Board shall have no power to add to, or subtract from, or modify any of the terms of this Agreement; nor shall the Board substitute its discretion for that of SEPTA or the Union where such discretion has been retained by SEPTA or the Union; nor shall the Board exercise any responsibility or function of SEPTA or the Union.

* * * *

(n) It is agreed that failure to take a grievance to the next higher step of the Grievance Procedure or to Arbitration within the time limits specified shall be construed as meaning that the grievance was settled at the preceding step of the Grievance Procedure.

The time limits set forth in the Grievance and Arbitration procedures may be extended in a particular

instance by mutual agreement of SEPTA and the Union confirmed in writing.

* * * *

(p) In any case where the matter in dispute involves the question of improper fare transaction procedures, theft by an employee, an employee having been under the influence of intoxicating liquor or drugs, or of an employee leading an unauthorized work stoppage, the only question which shall be determined shall be with respect to the fact of proper registration of fares, theft, having been under such influence, or leading an unauthorized work stoppage, as the case may be, and if it is determined that in fact there was not proper registration of fares or was theft or such influence or such leading to a stoppage, then the action of SEPTA based thereon shall be sustained.

The Carrier contends that the claim is not arbitrable under the parties' labor agreement, as it was not processed to arbitration in a timely fashion. It is further argued by the Carrier that the claim itself is without substantive merit.

The Organization asserts that the claim is arbitrable, as the contractual time limits for processing it were extended by implicit agreement of the parties. Concerning the claim's substantive merits, the Organization maintains that the penalty of discharge was excessive under generally accepted disciplinary standards.

The Board finds the Carrier's argument concerning arbitrability to be compelling. Article IV, Section 402(a) of the labor agreement does require that the Union request that a claim be arbitrated within 30 days of receipt from the Carrier of a third step answer. In this case, the Organization did not file a request for arbitration for approximately one year after receipt of the third step answer. Moreover, although section 402(n) does allow the parties to mutually agree to extensions of time limits for processing grievances, such extensions must be confirmed in writing. Although the Carrier here did not immediately raise the arbitrability defense, there

exists no written agreement to extend the 30-day time limit for processing a claim to arbitration.

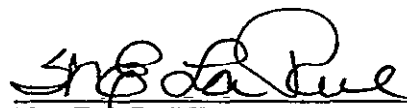
The Board further finds, however, that there is no need to decide this case on the timeliness issue in order to properly dispose of the claim. The substantive claim itself is clearly without merit.

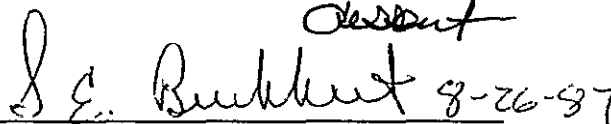
The evidence establishes that the Claimant committed dischargeable offenses on December 20, 1985. While at work, he participated in a fight with another employee and was under the influence of alcohol. Article IV, Section 402(p) of the Agreement states that once it is determined that an employee is intoxicated at work, "then the action of [Carrier] based thereon shall be sustained." Article IV, Section 402(i) states that the Board has no power to modify the agreement, and shall not substitute its discretion for that of Carrier where the Carrier has retained that discretion. Accordingly, notwithstanding the Organization's strenuous representation and the Claimant's commendable attempt to confront and overcome his personal problems, the claim must be denied.

AWARD

Claim denied.


 R. B. BIRNBRAUER
 Carrier Member


 W. E. LaRUE
 Organization Member


 S. E. BUEHHEIT
 Neutral Member