

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

"CARRIER"

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

"ORGANIZATION"

Award No. 8

STATEMENT OF CLAIM:

Claim of the Brotherhood (BWME-86-8-F11) that:

The dismissal of Eugene Burbage, 2nd Class Painter, for violation of Rule 20, is without just and sufficient cause, and the Claimant was discharged in an arbitrary and capricious manner.

REMEDY:

Claimant Eugene Burbage shall be reinstated without loss of compensation, seniority or benefits and privileges he enjoyed prior to his dismissal.

OPINION OF THE BOARD

Claimant, E. Burbage, was discharged for allegedly violating Work Rule #20 (Under the Influence) on September 17, 1986. The Organization seeks the Claimant's reinstatement without loss of compensation.

The arbitration hearing in this matter took place on August 26, 1987. Claimant was present and represented by the Organization.

The events relevant to this claim occurred on September 17, 1986. Claimant's foreman, James Doyle, approached Claimant that morning to give him the day's job assignment. Doyle concluded that Claimant smelled of alcohol, his eyes were red and glassy, speech slurred, and mannerisms unusual. Doyle received confirmation of his observations from several other foremen whom he asked to observe the Claimant.

Doyle then asked Claimant to undergo a urinalysis administered at Carrier's medical department. Claimant first balked but finally agreed to take the test when given a direct order to do so. Carrier sent the urine sample to an outside laboratory for analysis. Carrier then suspended Claimant pending results of the test.

The laboratory reported back that Claimant's blood alcohol content was above the legal limit for intoxication in Pennsylvania. Carrier then discharged Claimant.

Carrier Work Rule 20 (Under the Influence), cited by the parties, states:

Employees must not indulge in the use of, nor be under the influence of intoxicating liquor, malt beverages, harmful drugs, or patent medicines containing harmful drugs.

- a. While on duty
- b. When reporting for duty
- c. While off duty, but on any Authority property.

Possession of or carrying any of the above while on duty or on Authority property is strictly prohibited. "Under the Influence" shall include odor on the breath of any of the above which would be apparent to an average person and make such person suspect their use.

Employees having consumed any patent or prescription medications prior to reporting for work must immediately report same to their immediate supervisor upon the employee's arrival on Authority property.

Any employee violating this rule shall be
be subject to discharge.

Article IV, Section 402 (Arbitration) of the Labor Agreement
states in relevant part:

(p) In any case where the matter in dispute involves the question of improper fare trans-
action 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 maintains that the Claimant's discharge was proper,
as it has submitted clear evidence of the Claimant's intoxication.
It is further argued by the Carrier that according to Article
IV, Section 402 (p) of the parties' contract, the Board has no
authority to interfere with the discharge of an employee found
to be intoxicated at work.

The Organization maintains that the Carrier has failed to
meet its burden of establishing that the Claimant was intoxicated.
Specifically, the Organization argues that the test validity has
not been established and should not be relied upon. In addition,
the Organization argues that the Carrier handled the investigation
and claim in a flawed manner, including improperly refusing the
Claimant the right to have an urinalysis test performed by a labor-
atory of his choosing.

The Board has determined that the claim be denied.

Claimant's intoxication was established by the direct, eyewitness
testimony of Foreman Doyle. Doyle testified that there was

"absolutely no doubt" that the Claimant smelled strongly of alcohol and had glassy eyes and slurred speech. Doyle's assessment was corroborated by other foremen and the laboratory report.

Given Claimant's proven intoxication at work, Carrier committed no procedural errors which warrant setting aside the proscribed penalty of discharge. 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, the claim must be denied.

AWARD

Claim denied.

R. B. Birnbrauer *(ms)*
R. B. BIRNBRAUER
Carrier Member

W. E. LaRue
W. E. LARUE
Organization Member

S. E. Buehheit 1-6-88
S. E. BUCHHEIT
Neutral Member