

SPECIAL BOARD OF ADJUSTMENT NO. 1016

AWARD NOS. 163

CASE NO. 163

PARTIES TO
THE DISPUTE:

Brotherhood of Maintenance of Way Employees

vs.

Consolidated Rail Corporation

ARBITRATOR: Gerald E. Wallin

DECISIONS: Claim sustained in accordance with the Findings of the Board.

DATE: May 21, 2001

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

1. The discipline (withheld from service on May 18, 1995 and subsequent dismissal) of Mr. H. B. Baird for alleged violation of Rules 'D' and 'T' in connection with the charges that '... on May 8th, 15th and 18th, 1995 you falsified company records ...' and '... absenting yourself from your assignment without permission and unauthorized exit from Conrail property during your assigned working hours at Canton M/W Shop at approximately 10:59 A.M. on May 8, 1995, 11:04 A.M. on May 15, 1995 and 11:15 A.M. on May 18, 1995.' was arbitrary, capricious, excessive and in violation of the Agreement (System Docket MW-3923-D).
2. As a consequence of the violation referred to in Part (1) above, Claimant H. B. Baird shall receive the remedy prescribed by the parties in Rule 27, Section 4."

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant's supervisor, Mr. D. Gall, noticed Claimant missing from his assigned work area outside of the limits of his lunch period on several days in May of 1995. Gall also observed

Claimant to be patronizing a local tavern, "Our Bar," while away from his work area.

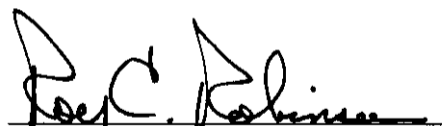
Subsequently, the Carrier charged the Claimant for violating Rules D and T, which relate to absenting himself from his assignment without permission and unauthorized exit from Carrier's property on May 8, 15, and 18, 1995. At the hearing, Claimant testified that his spouse passed away in 1993 and he became dependent on alcohol. It is obvious that the Claimant's dependency on alcohol began to interfere with his daily work regimen. Following the hearing, Claimant was found to be in violation of the cited rules and was dismissed from the Carrier's service.

The record reveals that Claimant had some 19 years of service with Carrier without any serious previous infractions of the Carrier's rules. The Claimant testified at the hearing that he had entered into treatment for substance abuse at the Longford Health Sources Massillon Community Hospital. Claimant had completed the treatment at the time of the investigation hearing and was enrolled in an outpatient rehabilitation program. Given these and other circumstances unique to this record as well as Claimant's long years of service, it is the Board's conclusion that the Claimant shall be offered reinstatement to his former employment, subject to passing Carrier's return to work requirements, with seniority and other rights of employment unimpaired but without back pay. Claimant's return to work physical examination shall include a DARS evaluation. Claimant's reinstatement and continued employment is conditioned upon his compliance with the recommendations of the DARS evaluation, if any.

AWARD:

Claim sustained in accordance with the Findings of the Board.


Gerald E. Wallin, Chairman
and Neutral Member


Roy C. Robinson,
Organization Member


Dennis L. Kerby,
Carrier Member