Special Board of Adjustment No. 1112

Parties to Dispute

Brotherhood of Maintenance of Way Employees' Division/IBT	)	
	)	
vs	)	**Case 102/Award 103**
	)	
Burlington Northern Santa Fe Railway Company	)	

Statement of Claim

Appeal of the dismissal from service of the Carrier of the Claimant to this case who is machine operator Brett R.Baker.

Background

An investigation was held on December 13, 2006 to determine facts and place responsibility, if any, in connection with charges levied against the Claimant to this case whose name is Brett R. Baker. According to the charges, the Claimant allegedly failed to follow instructions and recommendations outlined in a waiver of investigation signed on August 18, 2006. That waiver states that failure to "...comply with the conditions of this waiver will subject (the signer) to discipline..."1 An investigation into these matters was held at Vancouver, Washington. After the investigation was held the Claimant was advised that he had been found guilty as charged and he was dismissed from service.

The discipline was appealed by the Claimant in accordance with Section 6 seq. of an arbitration agreement signed on July 29, 1998 between the Carrier and the

1 Investigation Exhibit 5.

Organization that created Special Board of Adjustment (SBA) 1112 under the authority of the National Mediation Board. In accordance with the provisions of that agreement this case is now properly before SBA 1112. The neutral member has been granted final and binding powers to issue an Award on this case based on the criteria outlined by the parties in Section 8 of the agreement creating SBA 1112, and in accordance with Section 3 of the Railway Labor Act.

Discussion & Findings

Testimony at the investigation by the BNSF field medical officer is that it is she who has authority to determine whether employees involved in any one of the Carrier's fitness programs are able to return to work. A decision made by this physician could only be amended or reversed by the Carrier's chief medical officer. This has not happened in this case. According to this witness she was familiar with the background and case details of the Claimant to this case now before this Board and that it was her view that he was not fit to work for the Carrier.

Documentary evidence, to support testimony by this witness, shows that on August 23, 2006 the Claimant received correspondence by certified mail from the clinical director of CorpHealth, Inc. which is a contractor working for the Carrier, that the Carrier employee assistance manager had informed the undersigned that the Claimant had been "...relapsing starting July 24, 2006..." As a result the Claimant was advised that this company's professionals could not longer "...provide an opinion concerning (the

Claimant's ability to work safely..." The Claimant was then advised of a series of protocols that he would have to meet before re-consideration could be given "...(in order to) assert (that) he (could) work safely..." These included inter alia entry into a local treatment program and completion of a recommended treatment; continuation of recovery in a structured environment such as a half way house; abstinence from the use of drug and alcohol and drugs not prescribed by his physician;. attendance at AA or NA meetings daily for a prescribed period of time; obtaining a same sex sponsor, and so on. The letter also contained protocols that had to be followed by the Claimant upon --- if and when that might happen --- return to work. The Claimant was advised that his condition would be re-evaluated within "...six month from the date (he) receive(d) the letter...".2

On September 8, 2006 the BNSF medical field officer who testified at the investigation was advised that the Claimant was not being compliant with August 18, 2006 waiver of investigation, nor the instructions and protocols outlined in the August 23, 2006 letter to him and that he was discharged from a recovery center on that date "...for continuing to use drugs while in treatment..."3 This correspondence sent to BNSF was acknowledged on the date of its receipt. On December 11, 2006 the vice chairman of the union was advised by the manager of a program called Serenity Lane that the Claimant was admitted on November 2, 2006 and then discharged having "...completed the recommended detox and residential treatment on December 1, 2006..." He did not start

2 Investigation Exhibit 6.
3 Investigation Exhibit 7.

the intensive outpatient treatment at this program center as scheduled on December 4, 2006 albeit he did begin intensive outpatient care on December 11, 2006 for ten weeks which was to be followed by his joining a recovery support group meeting once a week for 11 months.

Testimony by the Vancouver, Washington road master is as follows.

The issue in this case is whether the Carrier was justified in discharging the Claimant on the date of January 4, 2006 for having violated the waiver of investigation on August 18, 2006 which was a violation of MWOR 1.13. This rule states that employees will report to and comply with instructions. The Claimant to this case did not comply with instructions when he failed to follow the instructions found in the August 18, 2006 and then August 23, 2006 correspondence to him.

As a corollary, and of particular concern of this Board in this case, is whether the Claimant, as a result of his violation of MWOR 1.13, is fit for duty. The evidence shows that the Claimant did not follow the instructions outlined in the August 18, 2006 waiver of investigation nor the August 23, 2006 protocol letter also sent to him. The Claimant continued to resist following the waiver requirements and the instructions until over two months until he finally was admitted to the Serenity Lane detox center in early November of 2006. The point of a waiver of investigation is to provide a quid pro quo whereby an employee is given an additional chance to prove himself in return for the promise --- and commitment --- to follow instructions for improvement. Clearly the Claimant to this case

violated the intent of such a bargain and according to information of record provided to the Board he continued such violations with impunity over what reasonable minds might consider to be an extended period of time. When it is a question of drug or alcohol usage some two months may indeed be considered an extended period of time. The Claimant simply refused to follow instructions about these important matter until early November albeit he affixed his signature to a document stating that he would change his ways shortly after the second week of August.

The railroad industry is a safety conscious industry and rightly so because of the dangers involved in working in this industry. Such observation is particularly salient for employees who are members of the craft involved in this case. The equipment used is often large and dangerous in and of itself, it is often complicated to operate, and the operation of the equipment requires highly developed skills and complete attentiveness. Given the Claimant's behavior patterns as outlined in the evidence of this case he poses a potential hazard to both himself and to his fellow employees since the use of drugs and alcohol impair perception. In his testimony at the investigation the Claimant stated that he did not comply with the program outlined for him on August 18, 2006 in full. According to him he complied with many of the protocols except those dealing with the intake of "…alcohol and drugs…" prescribed by a physician. In regard to this the Board can but observe that the Claimant, therefore, violated the most basic tenet of the instructions upon which most of its other details were contingent.

In his closing statement at the investigation the Claimant lists a series of events in his personal life which he intimates, as can best be determined, are related to his behavior with respect to August 18, 2006 waiver of investigation. Obviously, all employees have challenges in their personal lives. All employees must deal with these challenges without putting themselves and their fellow employee in danger. An employee's personal life cannot be used a grounds for behavior that might put the employee himself or his/her fellow employees at risk in the work place. For a Board such as this to rule otherwise would set improper and irresponsible precedent.

Upon the record as a whole the Board has no alternative but to deny the instant claim before it. The disciplinary determinations here taken by the employer were neither arbitrary nor capricious and the Board must rule accordingly.

Edward L. Suntrup, Chair &
Neutral Member

Date: 6/20/07