

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 12
Docket No. 12

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Track Supervisor L. C. Lager for alleged violation of Rule G and an accident with a Company Vehicle was without just and sufficient cause and excessive. (Organization File 2D-3677, Carrier File 81-83-114-D).
- (2) Track Supervisor L. C. Lager shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employee and the Carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute herein.

Claimant, with about twelve years of service, was employed by the Carrier as a Track Supervisor on the Trenton Sub-Division. The Organization states that his assignment required him to be away from his headquarters on two days, necessitating his staying in a motel and taking his meals out of restaurants. On March 1, 1983, claimant was notified to appear for formal investigation at 2:00 P.M., March 7, 1983, on the charge:

"Your responsibility in connection with violation of Rule G at about 10:30 PM Feb. 28, 1983, while operating Company Vehicle 21-3458 at Excelsior Springs, Mo., outside of your regular tour of duty hours and-

Your responsibility in connection with Accident with Company Vehicle Unit 21-3458, and another privately owned vehicle, in Excelsior Springs, Mo. about 7:00 AM, March 1, 1983."

The investigation was postponed and conducted on March 8, 1983.

Rule G of Carrier's General Regulations and Safety Rules, as read into the investigation by the conducting officer, provides:

"The use of alcoholic beverages or narcotics by employees subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on Company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on Company property is prohibited."

In the investigation it was developed, and claimant admitted, that following the completion of his regular tour of duty on February 28, 1983, claimant drove a Company truck, identified as Vehicle 21-3458, to an Excelsior Springs bar, then went to other Excelsior Springs bars where he consumed intoxicants, until about 10:30 P.M. when he was arrested, given a breathalyzer test, which indicated an alcohol test of .15, while under the Missouri law a test of .10 indicates intoxication. Claimant was charged by the police with three moving violations and driving while intoxicated. He was released on bond at about 3:00 A.M. On the following morning, after retrieving the Company vehicle, claimant was involved in an accident at a McDonalds parking lot about 7:00 A.M., left the scene of the accident, and subsequently Excelsior Springs police contacted the Carrier to ascertain the identity and whereabouts of the operator of the vehicle, which led to Carrier's knowledge of the incidents involved and the charge of March 1, 1983.

The record shows that throughout the handling claimant was cooperative with the Police of Excelsior Springs, with Carrier's Special Agent, and in the investigation conducted on March 8, 1983. Claimant, in answer to the question: "Do you feel like you complied with Rule G on February 28, 1983?" claimant responded "No, I did not." Claimant went on to state that he had a drinking problem "and I am seeking help and I am just sorry it took so long to find out..."

Claimant was dismissed from service on March 11, 1983. We agree that extreme discipline was warranted. We note, however, that the record contains a report from Shawnee Mission Medical Center, dated July 11, 1983, reading in part:

"Mr. Lager entered the Shawnee Mission Medical Center Alcoholism Recovery Unit on March 15, 1983. The program consists of a minimum 21 days as inpatient treatment for the disease of alcoholism. Mr. Lager completed 21 days on April 5, 1983, at which time he was discharged with the recommendation that he become active in Alcoholics Anonymous (AA) in the community."

Considering claimant's cooperation throughout the handling of the entire affair, and his apparent efforts to correct his drinking problem, we are not convinced that the ultimate industrial penalty of permanent dismissal was warranted. The time that claimant has been out of the service should constitute sufficient discipline. We will award that claimant be restored to service with seniority and other rights unimpaired, but without any compensation for any time lost while out of the service. We admonish claimant, however, that he must conduct himself in a satisfactory manner in the future and that further major infractions on his part will receive short shrift by all concerned.

A W A R D

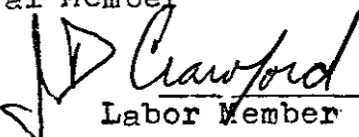
Claim sustained to the extent indicated in Findings.

ORDER

The Carrier is directed to comply with this Award within thirty days from the date hereof.


Chairman, Neutral Member


Carrier Member


Labor Member

DATED: 2-16-84