

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 17
Docket No. 21

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 Foreman I. M. Johnson for alleged violation of Rule G was without just and sufficient cause and excessive. (Organization File 7D-3560; Carrier File 81-83-49-D).
- (2) Foreman I. M. Johnson 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 with the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute herein.

The record shows that prior to his dismissal, claimant, with about eighteen and one-half years of service, was employed as a section foreman at Clarkfield, Minnesota, with hours 7:30 A.M. to 4:00 P.M., Monday through Friday.

On December 3, 1982, the Carrier's supervisory personnel received information indicating that claimant may be under the influence of intoxicants. The Roadmaster contacted claimant at about 11:30 A.M. The Roadmaster reported that he smelled the odor of alcohol on claimant's breath, and, upon request, the claimant consented to a blood alcohol test, which test was conducted about 2:20 P.M. Claimant was suspended from the service of the Carrier, and was notified to report for formal hearing on December 10, 1982, on the charge:

"Your responsibility for violation of Rule G of the General Regulations and Safety Rules while on duty as Track Foreman at Clarkfield, Minnesota, on Friday, December 3, 1982.

The hearing was conducted as scheduled and a copy of the transcript has been made a part of the record.

There was substantial evidence adduced at the hearing that claimant was under the influence of intoxicants while on duty on December 3, 1982. Claimant admitted having consumed alcoholic beverages the night before, but contended that he had consumed

none on December 3, 1982. The result of the blood alcohol test conducted about 2:20P.M., on December 3, 1982, was made a part of the record. The report showed a blood alcohol content at that time of 0.09%, and that under the Motor Vehicle Statutes of the State of Minnesota, a level of 0.10% creates a presumption of being under the influence of alcohol. It must be pointed out, however, that the blood alcohol test of claimant was conducted about seven hours after he had reported for duty.

The facts in the case warranted severe discipline. However, the record shows that claimant was 38 years of age, with 18-1/2 years of service for the Carrier, over 10 years as a section foreman, with a disciplinary record of one five-day suspension, and four letters of reprimand, with no evidence of investigations having been conducted in the reprimand cases. We consider this a good record, and find that permanent dismissal in the present case was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without pay for time lost while out of service.

A W A R D

Claim sustained in accordance with Findings.

ORDER

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

Paul C. Carter
Chairman, Neutral Member

J. A. Crawford
Carrier Member

H. G. Hanger
Labor Member

Date: 5/8/84.