

BEFORE SPECIAL BOARD OF ADJUSTMENT 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION CO.

AWARD No. 202

Case No. 225

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of B&B Carpenter G. W. Shrubshell for his alleged failure to comply with instructions by failing to submit to the Employee Assistance Program Information monthly and in a timely manner was without just and sufficient cause, unsupported and capricious (Organization File 3KB-4917D; Carrier File 81-92-105).
2. Claimant G. W. Shrubshell shall now be allowed the remedy prescribed in Rule 19(d).

FINDINGS:

In March of 1992, the Claimant was called back from a three-month furlough at which time he was required to fill out a "return-to-work health certification form". On the form, the Claimant indicated that he had been convicted on a DUI charge and had received alcohol abuse treatment. Because of this, the Claimant was notified by the Director of the Employee Assistance Program that he would have to meet specific criteria in order to be returned to service. Claimant failed to comply with the instructions of the Director.

As a result, the Carrier charged the Claimant with failing to "comply with instructions and Company policy....when you did not submit to the Employee Assistance

Program information monthly and in a timely manner as required...." Subsequently, a hearing was held and it was determined that the Claimant was guilty of the charges against him and he was dismissed from service. The Organization appealed the discipline but the appeal was denied.

The parties being unable to resolve the issue, this matter now comes before this Board.

This Board has reviewed the evidence and testimony in this case and we find that the Carrier presented sufficient evidence to support the finding that the Claimant failed to live up to the requirements of the conditions of his reinstatement under the alcohol and drug use policy.

The Organization argues that the Claimant was under restrictions imposed by the Court and that the Carrier was not a party to the Court-ordered treatment. Moreover, the Organization contends that the Claimant did not have any obligation to comply with the dictates of the March 30, 1992, letter which required the Claimant to comply with the Carrier rules and drug and alcohol policy.

However, it is fundamental that the Carrier has a right to require a medical examination and to set certain standards with respect to an employee's return to work. In this case, the evidence documents the fact that the Claimant had an alcohol abuse problem and had been arrested for drunk driving while out of service. That arrest led to alcohol treatment which had been mandated by the state of Illinois. This Board finds that the Carrier had a right to require that the Claimant maintain himself in an alcohol

treatment program for a period of time after he returned to work. The Claimant failed to live up to the return-to-work requirements of the Carrier. This Board finds that the Carrier was well within its rights with the restrictions that it put on the Claimant.

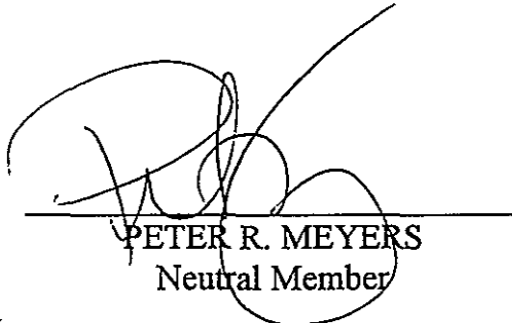
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

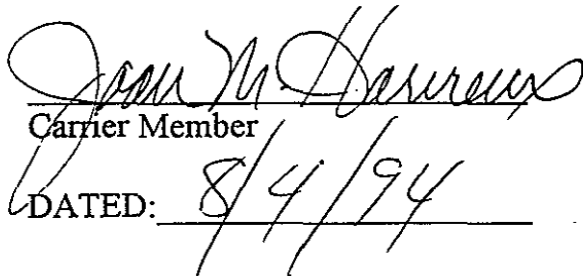
In this case, the Claimant was notified that his failure to comply with the conditions of his reinstatement could result in his dismissal. He knowingly failed to comply with those conditions. This Board does not find that the conditions wrongfully pried into the Claimant's personal matters. The Carrier wanted to protect itself from the potential of having an employee with an alcohol problem working on its premises.

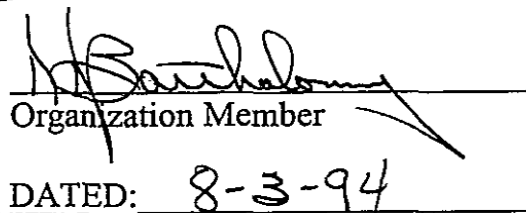
For all of the above reasons, the claim must be denied.

AWARD

Claim denied.


PETER R. MEYERS
Neutral Member


Carrier Member
DATED: 8/4/94


Organization Member
DATED: 8-3-94