

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 44
Docket No. 54

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 Trackman J. T. Negrete for alleged violation of Rule G was without just and sufficient cause; on the basis of an unproven charge and in violation of the Agreement.
- (2) Claimant J. T. Negrete shall be allowed the remedy prescribed in Rule 19(d)."

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.

The claimant was employed as a trackman on the Carrier's Chicago Division. About 11:20 A.M., November 18, 1983, the Assistant Roadmaster was informed that claimant had sustained a personal injury in the vicinity of Mayfair Tower. The Assistant Roadmaster went to the location where claimant was working, found him sitting on the ground, holding the left side of his face, and noticed that he was bleeding. The Assistant Roadmaster transported claimant to the medical center in his (the Assistant Roadmaster's) automobile, and, according to the Carrier, noticed the distinct odor of alcohol on claimant. Upon arrival at the treatment facility, the Assistant Roadmaster stated that the odor was on claimant's breath.

A language barrier existed between the claimant and Carrier's officers. The use of an interpreter was necessary, and through the interpreter the Assistant Roadmaster asked claimant to take a blood test, which request was declined.

On November 21, 1983, the Assistant Division Manager-Engineering, instructed the claimant to attend a formal investigation on November 23, 1983, on the charge:

"To determine your responsibility, if any, in connection with your violation of Rule G on Friday, November 18, 1983 near Mayfair at approximately 11:15 a.m."

The investigation was postponed to December 6, 1983. A copy of the transcript of the December 6, 1983, investigation has been made a part of the record. The Assistant Division Manager-Engineering testified at length in the December 6, 1983, investigation and on December 9, 1983, issued discipline of dismissal against claimant.

In the appeal on the property and in its submission to the Board, the Organization has contended that claimant was denied a fair and impartial hearing, as required by the Agreement, as a result of the roles of the Assistant Division Manager-Engineering as the charging officer, as a witness in the investigation, and as the deciding officer. This Board does not usually give much weight to so-called due process arguments concerning multiple roles by the same officer; such as the same individual issuing the charge, conducting the investigation, rendering the decision, and at times acting as initial appeals officer. However, when we have the same officer issuing the charge, testifying in the investigation, and then rendering the decision, we have a more serious situation. As stated in Award No. 73, Public Law Board No. 2960, involving the same parties as involved herein:

"It is difficult to accept that a material witness can review and issue discipline in an impartial way."

See also First Division Awards Nos. 21398, 8259, 8376, 10616, 11910, and Third Division Award No. 19062.

With the roles of the Assistant Division Manager-Engineering as accuser, a material witness, and deciding officer, we are forced to the conclusion that claimant was denied a fair and impartial hearing. The claim must be sustained.

We note also that some question has been raised as to the right of claimant to representation in the hearing. Employees are entitled to representation in on-property disciplinary hearings only as provided for in the agreement. See recent Third Division Awards Nos. 24998, 24999, 25000, and the court cases and other awards cited therein. As we have decided the present case on other grounds, there is no necessity for passing upon the representation issue raised.

A W A R D.

Claim sustained.

ORDER

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

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Paul Carter
Chairman, Neutral Member

J. D. Crawford
Carrier Member I Dissent

Dated: May 29, 1985.

H. G. Hanger
Labor Member