

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 76
Docket No. 104

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 I.M. Johnson for alleged unauthorized tardiness and violation of Rule G on February 22, 1985 was without just and sufficient cause and on the basis of unproven charges. [Organization File 7FM-3010 D; Carrier File 81-85-144 D]
- (2) Claimant I.M. Johnson 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 employees and the Carrier involved are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute herein.

Prior to Claimant's dismissal, Claimant was a section foreman at Springfield, Minnesota; Claimant's seniority dated from May 1, 1964. On February 22, 1985, Claimant's regular starting time was 7:30 a.m. At about 7:55 a.m. on February 22, Roadmaster Cross received a phone call from Claimant's girlfriend, who informed him that Claimant would be late due to car trouble. At about 11:15 a.m., Roadmaster Cross arrived at the Sleepy Eye site and saw Claimant driving the section truck. While questioning Claimant, Roadmaster Cross detected a strong odor of alcohol. Claimant subsequently declined several offers to take either a breathalyzer or blood alcohol test. Claimant informed Roadmaster Cross that he had consumed six or seven beers the previous evening; Claimant also

stated that he was an alcoholic.

Claimant subsequently was directed to appear at a formal investigation of the charge:

Your responsibility in connection with your unauthorized tardiness when you failed to report for duty at the designated starting time of 7:30 A.M. and your violation of Rule "G" on Friday, February 22, 1985, when you were assigned as a Track Foreman at Springfield, MN.

The investigation was held as scheduled, and a copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

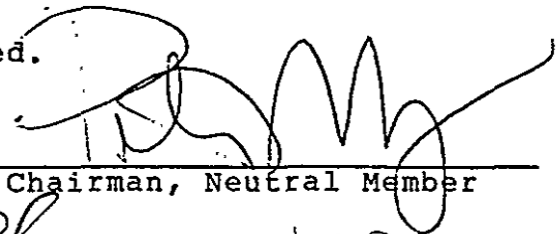
This Board has reviewed all of the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the Carrier's finding that the Claimant was guilty of unauthorized tardiness and reporting to work under the influence of alcohol. The Claimant was admittedly late for work without proper authorization, and he also admitted that he had consumed a large amount of alcohol the night before. He smelled of alcohol when he arrived for work, but he refused to take the requested blood or breath test. Hence, the only evidence in the record is the observations of the Carrier's witness whose testimony clearly sets forth a person under the influence of alcohol. Consequently, there is sufficient evidence in the record that the Claimant reported to work under the influence of alcohol.

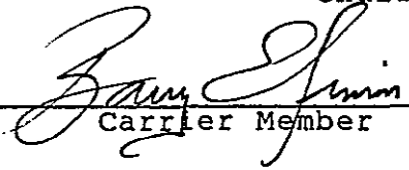
Once this Board finds that there is sufficient evidence to support the Carrier's finding of guilty, we next turn our attention to the type of discipline that was imposed. The Claimant was previously discharged for being on the job under the influence of alcohol in 1982. This Board reinstated him on the basis of his long seniority. This Board found that the discharge

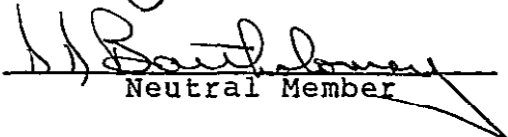
was excessive and returned him to work with a lengthy suspension. The incident which gives rise to this dispute occurred within less than a year after his earlier reinstatement. This Board gave the Claimant a chance to reform his behavior, but he has failed. We do not find that the Carrier's action in terminating the Grievant in this case was unreasonable, arbitrary, or capricious. Hence, the claim must be denied.

AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Neutral Member

Date:

October 6, 1986