

Special Board of Adjustment No. 956

PARTIES
TO
DISPUTE: Brotherhood of Maintenance of Way Employees
and
New Jersey Transit Rail Operations, Inc.

STATEMENT
OF
CLAIM: The dismissal of B & B Mechanic J. Toomey was harsh and excessive and he shall be reinstated without loss of seniority rights, vacation rights or other benefits.

FINDINGS: While on duty on August 15, 1985, claimant left the work site, entered a liquor store and purchased beer several times. There is credible evidence that he proceeded, still during his shift, to drink a large quantity of beer and to become intoxicated. Claimant does not deny consuming beer on the property during his working hours that day. The assigned duties were not completed during that tour of duty; claimant did not work beyond 10 a.m. of his 8 a.m. to 4:30 p.m. shift.

According to the testimony of a co-worker as well as of a mechanic who had been directed by the foreman to bring claimant and the co-worker back to headquarters by automobile, claimant was intoxicated and in no condition to work. Claimant was held out of service pending investigation.

A hearing was scheduled in the matter for August 26, 1985, but was postponed at the General Chairman's request on the ground that claimant was entering a clinical facility for treatment. By letter of September 24, 1985, Dr. Steven Cohen, the Clinical Director, reported that claimant was under his care in the Adapt Program, was showing a great deal of motivation but

"will not be able to return to work at this time because of his severe depression...serious enough to cause him to be presently disabled...Mr. Toomey will be entering into a long-term treatment program...He will also be continuing in therapy with me. Our plans are to have Mr. Toomey return to work at a later date once he is able to function..."

Hearing finally was held on May 7, 1986. On May 20, 1986, claimant was dismissed from Carrier's service on the basis of his actions on August 15, 1985.

In Petitioner's view, the discipline is unfair and excessive and should be set aside. It contends that Carrier has not given consideration to the time and effort claimant expended to cure his illness. It reasons that Carrier properly should seek to salvage claimant and not to injure him. Contrary to Petitioner's additional arguments, we find no reversible procedural error on Carrier's part.

Alcoholism is an illness that should be treated with consideration. That is not to say, however, that an employer may properly be compelled to retain an employee, unfortunately sick though he may be, when he cannot be relied on for steady and competent service.

A difficulty in the present case is that there is

no evidence that claimant is in a position to give Carrier a fair day's work. At this point in our history, there is no realistic basis for requiring Carrier to keep claimant on its payroll for a long indefinite period of time, much as we may all have a feeling of compassion for claimant and respect for his good record of nine years service.

Petitioner is quite wrong in its assertion that Carrier did not show claimant consideration in this case. The record indicates that Carrier was extremely patient in the matter. On the other hand, Petitioner's plea is certainly sincere and impressive.

On the basis of all aspects of the situation, we are of the opinion that claimant should be reinstated with seniority unimpaired and without back pay provided that an Employee Assistance Program counselor represents that claimant has for a period of sixty days abstained from the use of alcohol and followed the recommendations of that Program, including membership and regular participation in AAA or a substantially equivalent program authorized by the E.A.P.

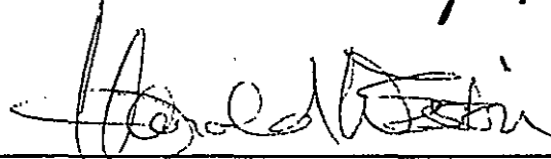
We recognize that a sixty-day period may not be considered adequate by many but, in view of the economic realities confronting claimant and the time he spent under Dr. Cohen's supervision, we have decided that a sixty-day period is not unreasonable.

The claim will be denied if the counselor referred to above does not make such a representation within six months after the effective date of this Award.

AWARD:

Claim disposed of in accordance with the final two paragraphs of the above Findings. To be effective within 30 days.

Adopted at Newark, N.J. July 1, 1987



Harold M. Weston, Chairman



Carrier Member



Employee Member