

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24209
Docket No. 43871
93-1-92-1-E-1268

The First Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(Elgin, Joliet and Eastern Railway

STATEMENT OF CLAIM:

"Claim of Engineer R. E. Bagnell for reinstatement to service with full seniority and vacation rights unimpaired, for payment of all time lost, until reinstated to the service of the carrier, payment for attending the investigation. Removal of the discipline from his personal record and restitution for the loss of fringe benefits, including vacation pay and reimbursement for dental, vision, medical and health insurance premiums and payments, and pension payments." (Organization's statement of claim as presented to the National Railroad Adjustment Board for adjudication).

FINDINGS:

The First Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was dismissed from Carrier's service effective December 20, 1990, for a violation of Rule G. The essential facts in this case are not in dispute. On October 27, 1990, Claimant came on duty as Engineer on the Hump Job at Carrier's South Yard at midnight. About one hour after the start of his assignment, one of Claimant's switchmen complained to a Trainmaster that something might be wrong with Claimant as he was not responding to signals. The Trainmaster boarded the engine and asked Claimant if he had been drinking or was ill. Claimant denied he had been drinking and

explained that he was tired as a result of working 24 days of the last 26. The Trainmaster did not detect an odor of alcohol, and allowed Claimant to continue working.

At approximately 2:50 A.M., Claimant's engine was stopped and efforts to reach him on the radio were unsuccessful. When the engine began to move again, the Trainmaster told him to stop and then went to meet Claimant. When the Trainmaster boarded Claimant's engine, he found Claimant sleeping. The Trainmaster ordered Claimant off the engine and, with the assistance of another Trainmaster and a Special Agent, administered a breath test on Claimant. Claimant's breath test yielded blood-alcohol ratios of .105% and .100%. Claimant did not dispute these test results.

The Organization does not challenge Carrier's conclusion that Claimant was in violation of Rule G. Instead, it argues the Carrier failed to apply its own Employee Assistance Program (EAP) Policy in that it did not permit Claimant to enter the EAP as an alternative to discipline. The Organization asserts the Trainmaster had a responsibility to refer Claimant to the EAP when he first noted that Claimant had a job performance and safety problem. The Organization also characterizes the report by Claimant's switchman as a co-worker referral. Finally, the Organization suggests Claimant had referred himself to the EAP.

Carrier insists it followed its EAP Policy, which provides, in part, as follows:

"In order to encourage employees to obtain help for drug, alcohol or other problems before the employee faces dismissal, employees who are affected by an alcohol or drug use problem, or any personal problem which is affecting the employee's job performance or safety, may maintain an employment relationship with the Company if the employee seeks assistance for his problem, or is referred for such assistance by another employee, or by a collective bargaining unit representative, prior to being subject to discipline for conduct deemed by the Company sufficient to warrant dismissal."

In a literal sense, the Carrier is correct that neither the Trainmaster nor the Switchman had any basis for referring Claimant to the EAP. When the Switchman contacted the Trainmaster, he gave no indication Claimant was under the influence of alcohol. There is, in fact, no evidence that the Switchman had even seen Claimant up until that time. When the Trainmaster then spoke to Claimant, he got no indication Claimant was suffering from a condition which would benefit from the EAP. Similarly, when Claimant attempted to

lay off before this assignment, he merely told the crew callers that he was tired, giving no indication he had a substance abuse problem.

The spirit of the Carrier's policy, however, is to get help for employees before they get into trouble. The coworker report policy allows an employee to maintain an employment relationship with the Carrier if his Rule G violation is brought to the Carrier's attention by a coworker, provided the employee meets certain requirements. While it is true the Switchman did not report a Rule G violation, it was his first report of Claimant's behavior which attracted the Trainmaster's attention. When the Trainmaster first boarded Claimant's engine, his initial inquiry was about Claimant being under the influence of alcohol. We also note Claimant entered engine service in 1979. Since then, he has been disciplined twice for absenteeism and once for wearing improper shoes. He has had no previous Rule G violations.

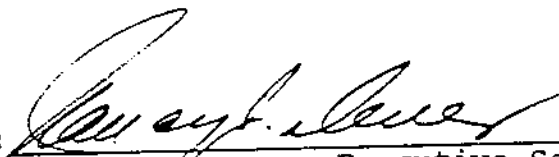
Under the unique circumstances of this case, it is our conclusion the discipline imposed by Carrier was excessive. We will direct that Claimant be reinstated to service with his seniority unimpaired, but without compensation for time lost. In addition, as a precondition to his reinstatement, Claimant may, at the Carrier's discretion, be required to complete a rehabilitation program as prescribed by the Employee Assistance Program Administrator.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of April 1993.