

PUBLIC LAW BOARD NO. 6284

PARTIES TO DISPUTE:

Brotherhood of Locomotive Engineers

-and-

Burlington Northern-Santa Fe Railway

AWARD NO. 11

CASE NO. 11

STATEMENT OF CLAIM:

Claim that Engineer Stiffarm be reinstated immediately with seniority unimpaired, paid for all time lost and that the notation relative to this incident be removed from his personal record.

FINDINGS:

This Public Law Board No. 6284 finds that the parties herein are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By letter dated June 4, 1999, the Claimant, Engineer J.P. Stiffarm, was notified that he was dismissed from service for violation of Rule 1.5 as follows:

This letter will confirm that as a result of formal investigation on May 28, 1999, concerning your violation of Rule 1.5 of the General Code of Operating Rules while on company property at approximately 0150 hours, Thursday, May 20, 1999 you are dismissed from employment for violation of Rule 1.5 of the General Code of Operating Rules.

Please arrange to return all Company property and any Amtrak transportation passes in your possession. A check will be issued for any moneys due you.

This letter will be placed in your personal file. Your signing below serves as receipt of this dismissal. Your personal record was taken into consideration in assessing this discipline.

Respectfully,

s/W.C. Stuhldreher
Terminal Manager

The discipline was appealed by the Organization and the matter is now properly before this Board for adjudication.

The Carrier has not met its burden of proof by substantial evidence of record that Mr. Stiffarm was in violation of Rule 1.5 while on company property at approximately 0150 hours on May 20, 1999. The testimony of the BNSF police officer involved in the matter does not amount to substantial evidence of record. He testified in part as follows having had a city police officer stop the Claimant after the Claimant had cut across a BNSF access road for a distance of 100 to 200 yards.

... I approached the vehicle to begin with because I had the patrolman stop him. Talked to the subject, I asked him if he was aware that he was driving on BNSF property, and by doing so it was criminal trespass. The subject stated at the time, "I was just trying to get home." I said, "Well, what were you doing on the property?" Again, "I was just trying to get home." Well after, when he said that, I could smell alcohol on his breath, so I turned to the police officer and said, "I think this guy's been drinking", and so he took over from there. I got Mr. Stiffarm's receipt of a duplicate license from him, and I walked back to my patrol vehicle to run the license through the local dispatcher to see if it was valid. And while I was doing so, I observed the police officer take Mr. Stiffarm over to the sidewalk and do, ask him to do field sobriety maneuvers. I didn't hear any of what happened at that point, as I was in the patrol vehicle. But after I ran the license for validity, I came back to where they were standing, and the patrol officer was asking Mr. Stiffarm some questions. Then he was placed under arrest by the police officer and put into the back of his patrol car. (emphasis added)

The Carrier did not produce the city police officer as a witness. Surely up to the point described above by the BNSF officer the Carrier has not met its burden of proof where its police officer turned over the entire field sobriety test of the Claimant to a city police officer on city jurisdiction and went back to his own vehicle to run the license. Later Mr. Stiffarm authorized the BNSF police officer to park and lock his vehicle. The police officer observed a plastic Bud Light cup on the seat filled with ice tipped over on its side and

he testified that it, "smelled like there was alcohol." He stated:

... Without the proper tests I can't prove that
it was alcohol, but it had the smell of an
alcohol based substance in the cup. ...

No "proper tests" were submitted as evidence to this Board. We do not know what happened to the cup in the record before this Board. And, the DUI case against the Claimant was dismissed by the appropriate court. The deputy city attorney filed a motion to dismiss the action against Mr. Stiffarm "... in the interest of justice, as the investigating officer did not have a particularized suspicion to arrest Defendant for DUI," and a city court judge dismissed the case against Mr. Stiffarm on August 11, 1999.

Mere possession of alcohol by an employee on company property even for 30 seconds to a minute while traversing a company access road is a Rule 1.5 GCOR violation. The dangers inherent in the industry and the need to protect employees, the public and private and public property, demand such a zero tolerance rule. And such a rule is strictly enforced by boards of arbitration. But that does not mean that a public law board will relieve a Carrier of its burden to prove a Rule 1.5 violation by substantial evidence of record when the Carrier's police officer defers to a city to prosecute or it fails to properly develop a case. The Carrier did not make out a proper case at the formal investigation on May 28, 1999. The criminal case was dismissed. We have no alternative but to sustain this claim.

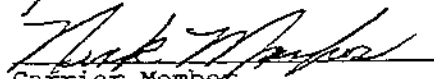
AWARD

Sustained.

ORDER: The Carrier is required to comply with this award within thirty days.


Chairman and Neutral Member


Employee Member


Carrier Member

Dated: Feb 26, 2001