

SPECIAL BOARD OF ADJUSTMENT NO. 910

PARTIES) UNITED TRANSPORTATION UNION (T)
TO)
DISPUTE) CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

"The appeal of Brakeman D. A. Gorka who was dismissed in all capacities account a violation of Rule 'G' at Elkhart, IN while assigned as a brakeman Train ELIC-9 on May 9, 1987." (System Docket No. CR-T-4534-D; UTU file No. 194-552)

FINDINGS:

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

Claimant, an employee of 19 years service, was admittedly guilty of violation of Rule "G". He offered, upon being questioned by a Carrier Trainmaster while on duty at about 2:25 P.M. on May 9, 1987, at Elkhart, Indiana, that he had consumed a number of alcoholic drinks the previous night. He consented to a blood-alcohol test. It registered 0.07 percent blood-alcohol content on the test scale.

At the company hearing the Trainmaster said he went to the location where Claimant had just shortly before reported for duty to check his physical appearance on the basis of what he stated was an anonymous call to the effect that Claimant had been drinking. In this connection, the trainmaster said:

"At approximately 1:50 p.m. on May 9, 1987 I received a phone call from an anonymous caller that the Brakeman, Mr. Gorka, had to be checked for possibility of Rule 'G' violation."

The Organization contends that since Claimant was on duty, the anonymous call must be considered to have come from a fellow employee and that Claimant was therefore entitled to benefit of the "Co-Worker Referrals Memorandum of Agreement." It argues that Claimant would then have had opportunity to waive a formal hearing and the consequences thereof, and instead have had the benefit of a continuing employment relationship by officially meeting with an Employee Counselor for evaluation and recommendations as to such counseling as might have been appropriate in connection with a drinking problem. Carrier, on the other hand, offers argument that such call could well have come from a number

of persons, including relatives of Claimant. It suggests a presumed knowledge by such a person or persons of Claimant's drinking problem, his job assignment, and familiarity with a railroad vocabulary in describing a train service employee as a brakeman and use of the historic reference to "Rule 'G'" as prohibiting the use of intoxicants by railroad employees while on duty.

Questioned at the company hearing, the Trainmaster said that this was the first time he had received a call relative to an employee being in violation of Rule "G;" he had not talked to any members of the crew, except as concerned having had "small talk" with the engineer of Claimant's train; and, had he not received the call and otherwise have come into contact with Claimant that it would have been difficult to have judged Claimant to be in violation of Rule "G" at the time in question, except as concerned the smell of "a slight odor of alcohol" on Claimant's breath.

Although the railroad terminology used in the verbal communication which the Trainmaster had with a caller strongly suggests the caller was a co-worker, this Board has no reason to hold from the record that the caller had in fact identified himself or herself to the trainmaster so as to definitely establish the caller as being a co-worker.

However, the Board does believe that Claimant should have been told at the time he was confronted by the Trainmaster that the reason for his being at the work location was for the express purpose of checking Claimant's physical condition as the result of statements made by an anonymous caller. It does not seem to the Board that any useful purpose was being served by such information being withheld from Claimant until the company hearing. Certainly, if Claimant had been aware of such circumstance at the time in question, he could have made inquiry of his co-workers to determine if any of them had in fact made the call in pursuance of the Co-Worker Referrals Agreement.

In this latter regard it is significant that despite not having been extended benefit of the Co-Worker Referrals Agreement that Claimant did nevertheless immediately contact an Employee Counselor on being removed from service and did come to be admitted or enrolled in an alcohol rehabilitation program. Further, it is apparent from the record that he has continued his rehabilitation in an aftercare program.

In view of the particular circumstances of record, and in keeping with the spirit of the Co-Worker Referrals Agreement, we believe Claimant should be returned to service on condition of his entering into a written agreement with the Carrier to abstain from alcohol and drugs and continue his rehabilitative efforts. It will be held, therefore, that Claimant be reinstated to service with seniority and other benefits unimpaired, but without compensation for time lost, conditioned on execution of an agreement providing

as follows:

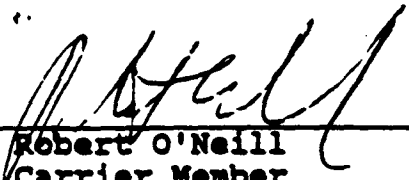
1. Claimant shall participate in Carrier's Employee Assistance Program for as long as the Employee Counselor determines is required.
2. Claimant shall remain alcohol and drug free at all times.
3. Carrier shall have the right to test Claimant for alcohol or drugs in his system at any time. If Claimant refuses to be tested or is found to have alcohol or drugs in his system, he may be immediately removed from service and charged with a violation of Rule "G".
4. Failure of Claimant to live by the conditions of this agreement can result in his permanent discharge from Carrier's service.

AWARD:

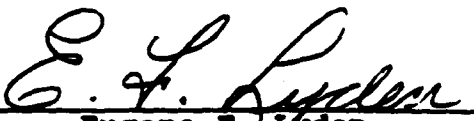
Claim disposed of as set forth in the above Findings.



Robert E. Peterson, Chairman
and Neutral Member



Robert O'Neill
Carrier Member



Eugene F. Lyden
Organization Member

Philadelphia, PA

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