



Award No. 4756

Docket No. 4706

-2UP-CM-'65

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That on May 12, 1963 at Kansas City, Kansas the Carrier unjustly discharged Carman, John L. Wheeler from the service of the company.

2. That accordingly, the Carrier be ordered to restore him to service with pay for all time lost and with seniority rights unimpaired, and that he be made whole for loss suffered with respect to retirement, hospitalization, dependent hospitalization and life insurance benefits due him by Agreement' rights, which loss he has suffered as a result of this excessive discipline.

EMPLOYEES' STATEMENT OF FACTS: John L. Wheeler hereinafter referred to as the claimant, had been employed as a carman by the Union Pacific Railroad Company, hereinafter referred to as the carrier, since August 4, 1944. His record shows August 4, 1944 to August 30, 1945, Car Inspector at Los Angeles, California, and from September 13, 1945 to May 12, 1963 at Kansas City, Kansas on which date he was removed from service.

Upon a request by assistant terminal superintendent, A. A. Mais, to car foreman, Paul Willard at approximately 1:35 P.M. May 12, 1963, Mr. Willard after hearing Mais's alleged statement of an incident at the 18th Street train yard, reported to general car foreman, R. E. Mauck, who then instructed Mr. Willard to remove claimant from service.

On May 14, 1963, claimant received formal notice from general car foreman, Mauck, charging him that he violated Rule "G" set out in rules and instructions of the motive power and machinery department effective October 1, 1954, in the general rules, in that you had intoxicants in your possession and for the use of intoxicants on the 8:00 A.M. to 4:00 P.M. shift at 18th Street Yard, Kansas City, Kansas, at approximately 1:30 P.M., May 12, 1963, while on duty and on company property.

There were two requests by the local chairman, F. B. Warner, for postponement of the investigation in order that he could secure additional information in behalf of Mr. Wheeler and these requests were granted. Investigation was held June 4, 1963.

This dispute has been handled with all officers of the carrier designated to handle

Findings: The Second 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 were given due notice of hearing thereon.

The employes are asking this Board to evaluate the conflicting evidence presented at the investigation differently than was done by the hearing officer. However, he sees and hears the witnesses and the evaluation of their testimony is his function. We do not see or hear the witnesses and are not able to reevaluate their testimony. If there be substantial evidence to support the decision of the hearing officer as to guilt or innocence of the charge, we must affirm. This has long been the system in effect and, if the employes are desirous of a change, it can only be attained by negotiation and agreement. We are without authority to alter the existing agreement.

In this case it is obvious that there was substantial evidence adduced at the investigation to support the finding that claimant was guilty of a violation of Rule G.

The employes contend that dismissal was too severe a penalty because of claimant's length of service. This is not an appropriate case for consideration thereof, because it appears that the claimant compounded his offense by his efforts to get rid of evidence and his incredible testimony at the investigation in an attempt to evade responsibility for his conduct.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September, 1965.