

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That Carrier improperly suspended Machinist C. D. Rohdenburg (hereinafter referred to as Claimant) from service on December 19, 1974 and subsequently dismissed him on February 4, 1975.
2. That Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired, which includes vacation and insurance benefits, with compensation for all wage loss from December 19, 1974, until restoration to service.

Findings:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

On December 23, 1974, Claimant was notified of a formal hearing in connection with an allegation that he was away from his post of duty without proper authority, and in possession of an alcoholic beverage when observed in his vehicle in the parking lot.

Subsequent to the investigation, Carrier determined that Claimant was guilty, as charged, and dismissed him from service.

The Organization has asserted that the Carrier did not handle the case in accordance with the terms of the controlling Agreement, to the prejudice of the Claimant, and it refers to the failure of the Hearing Officer to produce Claimant's timecard at the investigation. Based upon the testimony of record, and certain admissions made by Claimant, we do not concur that the allegation concerning the timecard is sufficient to set aside the findings.

At the investigation, the Claimant conceded that he did not have authorization before he left his place of employment and went to his automobile. Although he attempts to justify the departure, based on certain assertions that he had advised Carrier Officials that he was not feeling well, we find that the evidence was sufficient to substantiate the Company's findings.

Moreover, we note that the charge against Claimant asserts that Claimant was in possession of an alcoholic beverage when observed in his car. We feel that the testimony of record is sufficient to substantiate findings of guilty in that regard. Claimant's assertion that the container of liquid had been left in his car, on the front seat, on the preceding evening was obviously not afforded credibility by the Carrier. It is, of course, not our function to substitute our judgment for that of Carrier in these types of cases, as long as its credibility determinations have a basis in the record.

We find substantial evidence of record, including the testimony of Claimant, to support the finding of guilt, and we cannot state that the quantum of discipline was inappropriate to the offense.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of December, 1976.