

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
 { Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current Agreement, the action of the Consolidated Rail Corporation (ConRail) in the removal of Electrician D. C. Johnston from the service and his eventual dismissal on September 15, 1980 was unjust, capricious and arbitrary.
2. That accordingly, the Consolidated Rail Corporation be ordered to restore Electrician D. C. Johnson to service with his seniority rights unimpaired and compensated for all time lost.

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 waived right of appearance at hearing thereon.

On August 29, 1980, at approximately 8:00 P.M., the Claimant, D. C. Johnston was one of six employes found in the washroom facilities of the refuel station office by three supervisors who were acting upon prior reports of alcoholic beverages being consumed in the terminal area. The Claimant, who was on duty, was removed from service at that time and charged with violation of Safety Rule 4002 and Rule G. The Claimant subsequently appeared at a trial and, on September 15, 1980, was informed his dismissal was effective immediately.

The Organization protests the circumstances of Claimant's removal and asserts he simply was not given a chance. While acknowledging some of the individuals did have beer and that there were empty cans in a trash barrel, the Organization claims the Carrier acted solely on the basis of guilt by association.

The Board agrees that the evidence in this case is primarily circumstantial. Despite the heat and humidity, three witnesses testified the Claimant smelled of alcohol and was glassy eyed. This Board has repeatedly held that non-expert testimony of laymen witnesses concerning observations dealing with sobriety or consumption of alcoholic beverages is competent and probative testimony. The use of alcoholic beverages, intoxicants and/or narcotics is prohibited by Rule

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G and has been recognized as a proper cause of dismissal. We find no basis upon which to disturb the findings of the Carrier and the action taken.

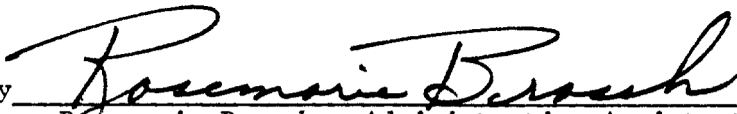
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of July, 1983.