

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Laborer Billy C. Cray, I.D. No. 163056, was unjustly dismissed from service of the Seaboard System Railroad on May 5, 1983, after a formal investigation was held in the office of Asst. Master Mechanic, on March 9, 1983.
2. That accordingly, Laborer B. C. Cray be restored to his assignment at Hialeah Shops, Hialeah, Florida, with all seniority rights unimpaired, vacation, health and welfare benefits, hospital, life and dental insurance premiums be paid, and compensated for all lost time, at the pro-rata rate of pay, effective May 5, 1983, and the payment of 10% interest rate be added thereto.

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 employes 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.

Claimant, Laborer Billy C. Cray, entered the service of Carrier on March 23, 1972, at Hialeah, Florida. On February 22, 1983, Claimant received notice that he was charged with possible violation of Rule 12 and Rule 18. A formal investigation completed on March 9, 1983 resulted in Claimant's discharge on May 5, 1983.

The Organization argued both in its Submission and at hearing that the evidence was insufficient to prove that Claimant was guilty of the charge, that Claimant's dismissal occurred after a summary investigation and that the discipline administered was harsh and capricious. The Carrier contends that the investigation was fair and impartial, and that Claimant was proven to be dishonest and in possession of an intoxicant in violation of Rules 12 and 18, which read as follows:

"Rule 12:

Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, incompetency, willful neglect, inexcusable violation of rules resulting in endangering, damaging or destroying life or property, making false statements or concealing facts concerning matters under investigation will subject the offender to summary dismissal."

"Rule 18:

The use of intoxicants or narcotics by employees subject to duty, or the possession or use of intoxicants or narcotics while on duty or on Company property is prohibited. Their use is sufficient cause for dismissal."

Carrier's car foreman testified that Claimant worked as a laborer under his supervision on February 20, 1983. He testified that as he approached the men's washroom at approximately 11:15 a.m. that day, Claimant emerged from the washroom with a gold top can wrapped in a paper towel. When he saw the car foreman, Claimant promptly turned around and stepped down in the doorway to the washroom. The foreman immediately proceeded into the washroom where he located an unopened can of beer partially wrapped in a paper towel behind the door where he first noticed Claimant to be standing.

Claimant produced two employees at the hearing who were working with him on the day of the occurrence. Claimant's fellow employees testified that they did not see a can of beer in Claimant's possession. Both witnesses did acknowledge that they were washing their hands when the foreman first entered the washroom, and that the Claimant had dried or was drying his hands and had a paper towel in his hand.

The record further shows that the Claimant had a distinct odor of beer about his person. The testimony of both the Carrier's witnesses as well as the Claimant was that the latter had admitted under previous questioning that he had been drinking heavily the night before the incident. During that night beer was spilled on his shirt, but Claimant denied having had any beer in his possession as charged. There was insufficient evidence of actual alcohol use by Claimant on the property, or that he reported to duty under the influence.

The question of the credibility of witnesses and the weight to be given their testimony is primarily one for determination by the Hearing Officer, but this general rule should not be applied mechanically so as to compel this Board to sustain any finding concerning testimonial evidence. We cannot state upon review of the entire record that the Hearing Officer in this case improperly assessed the credibility and weight of the witnesses. The Carrier has met its burden of proof in the instant appeal.

However, the Board is of the considered opinion that the discipline assessed under the facts and circumstances of this case was excessive. Claimant was an employee of eleven (11) years service at the time of his dismissal, with two letters of reprimand and a 5-day suspension during the entire period of his employment. While the Board finds upon the record sufficient evidence of a violation of a very important rule in this industry, the evidence is far from overwhelming in nature to justify the supreme penalty of discharge. Claimant shall be reinstated to his assignment at the Hialeah Shops, Hialeah, Florida, but without back pay or any benefits which would have accrued during the period of removal from service.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of April 1985.