

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10599
Docket No. 10718
2-CUSC-FO-'85

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (*(International Brotherhood of Firemen & Oilers*
(Chicago Union Station Company

Dispute: Claim of Employes:

1. That Stationary Engineer John Morgan was unjustly disciplined for ninety (90) calendar days, beginning December 31, 1982 through March 30, 1983.

2. That accordingly, the Chicago Union Station Company be ordered to compensate Stationary Engineer John Morgan for every day he would have been eligible to work between December 31, 1982 and March 30, 1983, plus 6% annual interest, and that his seniority rights, vacation rights and all other benefits that are a condition of employment be unimpaired. Also that the charges, transcript and discipline be removed from Mr. Morgan's permanent record. We further request reimbursement of all losses of coverage under any Health and Welfare and Life Insurance Agreements while held out of 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 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, Stationary Engineer J. Morgan, has been employed by the Carrier, Chicago Union Station Company, since September 5, 1980.

On January 11, 1983, a hearing and investigation was held on the charges that the Claimant consumed an alcoholic beverage while on duty on December 30, 1982; left before the end of his shift on December 2, 1982; and made out false time reports that showed he had worked a full shift on December 2, 1982. As a result, the Claimant was suspended for ninety calendar days.

The Organization filed a Claim on the Claimant's behalf, alleging that the Claimant was unjustly disciplined.

The Organization contends that the Carrier failed to prove that the Claimant drank alcohol while on duty. The Claimant did have a can of beer in his possession, but gave it to a fellow employee to drink on his way home; the Claimant himself drank only a nonalcoholic beverage, Near Beer, from a styrofoam cup. The Organization points out that the Carrier made no attempt to obtain the beer can from which the Claimant allegedly drank, did not test the contents of the styrofoam cup, and did not test the Claimant to see if he had consumed alcohol. Also, the notice of discipline did not state that the Claimant had been found guilty of the charge. The Carrier therefore failed to meet its burden of proof.

The Organization also maintains that the investigation was not conducted in a fair and impartial manner. As to the charges that the Claimant left work before the end of his shift and submitted false time reports, the Organization asserts that it is normal practice for Stationary Engineers to leave early if their replacement is present.

The Organization therefore contends that the Claim should be sustained; the Claimant should be compensated for the full period of the suspension plus 6 percent annual interest, all of his benefits and seniority rights should be restored unimpaired, all losses of insurance coverage reimbursed, and all notations of these charges and the discipline removed from the Claimant's permanent record.

The Carrier contends that it acted fairly and responsibly in disciplining the Claimant; the discipline was not arbitrary or capricious. Two witnesses saw the Claimant take a beer can from his coat pocket, open it, pour the contents into a styrofoam cup, and then drink from the cup. The Claimant also was previously disciplined on a similar charge. Also, no mention was made that the beverage was allegedly nonalcoholic until the hearing.

The Carrier further asserts that signing out early from a shift is contrary to the work Rules; it is unaware of any normal practice for Stationary Engineers to leave early.

The Carrier further points out that the Organization made no mention of interest on the Claim as it was processed on the property. Also, the current Agreement does not provide for the payment of interest on Claims. The Carrier argues that the interest portion of the Claim has no validity.

The Carrier therefore contends that the Claim should be denied in its entirety.

This Board has reviewed the testimony and evidence in this case, and it finds that the Carrier had ample basis to assess discipline against the Claimant. Although the Claimant contends that he was drinking Near Beer, two witnesses at the hearing stated clearly that they saw a Budweiser beer can in the Claimant's hand and that he was drinking from it. Moreover, the Carrier presented evidence at the hearing that the Claimant had given a can of beer to another employee on the same evening. The Claimant allegedly stated to that witness that it was the Holidays, and he was having a drink to celebrate. Consequently, the Carrier has presented ample evidence that the Claimant was drinking alcoholic beverages while on duty on December 30, 1982.

Moreover, the Claimant admitted at the hearing that he had not complied with the requirements for leaving work and that he had left early without permission and had claimed pay for the entire shift. That admission is certainly ample evidence to support discipline.

Once this Board determines that discipline is appropriate, it will only set aside the Carrier's discipline if it is found to be unreasonable, arbitrary, or capricious. Since there is evidence in the record that in 1981 the Claimant had been previously disciplined with a ten-day suspension for possession of an alcoholic beverage while on company property and not performing his duties, it was not unreasonable or in any way improper for the Carrier to impose a ninety-day suspension on the Claimant for the behavior for which he was proven guilty in this case. Consequently, this Board will not set aside the discipline imposed by the Carrier on the Claimant in this case.

With respect to the Organization's procedural objections that the investigation was not conducted in a fair and impartial manner, this Board finds no evidence to support them. Consequently we find that the hearing was appropriate.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1985.