

Award No. 235

Docket No. 237

2-MP-MA-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinist T. P. Thompson, Monroe, Louisiana, be reinstated with full seniority rights and compensated for all time lost.

EMPLOYEES' STATEMENT OF FACTS: Machinist T. P. Thompson, Monroe, La., was, on Aug. 1, 1937, held out of service on the charge of operating motor vehicle while under the influence of intoxicating liquor July 15, 1937.

Under date of August 19, 1937, Mr. Thompson was officially notified by Superintendent Bassett that he was dismissed permanently from service on above charge.

POSITION OF EMPLOYEES: We contend that Machinist Thompson was not intoxicated or operating a motor vehicle while under the influence of intoxicating liquor as charged. It is admitted that Mr. Thompson drank one bottle of beer at about 1:00 P. M., and one bottle of beer at about 2:30 P. M.; however, we contend that the consumption of this moderate amount of beer at intervals of 1½ hours would not place a person under the influence of intoxicating liquor as defined in dictionary or Louisiana laws, and certainly not to the extent of intoxication.

To corroborate our contention, we respectfully submit copies of investigation, employees' Exhibit A, and copy of affidavit of T. P. Thompson, employees' Exhibit B, which are conclusive that Mr. Thompson was in full possession of his normal faculties.

Employees' Exhibit C, copy of affidavit of H. D. White, where he exonerates Mr. Thompson from all responsibility relating to accident, which was primary cause of controversy, and indicates that Thompson was in normal condition; employees' Exhibit D, affidavit of J. I. Pigg, a disinterested spectator at time of accident; employees' Exhibits E, F, and G, copies of affidavits submitted by responsible business men of Monroe. We respectfully refer you to employees' Exhibit H, copy of letter submitted by Judge W. M. Harper, particularly to paragraph 7 of letter.

It is our further contention that Mr. Thompson is of a very temperate and sober disposition. To substantiate this contention, we respectfully submit Exhibit I, copy of affidavit submitted by Milton C. Coverdale, sheriff of

Railroads are greatly dependent upon the transportation business they derive from local communities, and the morals of their employes probably have more influence upon such business in local communities than any other line of business.

In the instant case one of the carrier's employes, notwithstanding the fact that he may have been temporarily absent from active duty for the day, became involved in a situation on the streets of the city of Monroe to the extent that caused his arrest for violation of a city ordinance. There is no question of his guilt as corroborated by the city court's records (carrier's Exhibits Nos. 1 and 2), and the measure of discipline imposed by the carrier on its employes for their acts that are inimical to the best interest of the carrier, is certainly not a subject for adjudication by your Honorable Board. The right of your Honorable Board to pass upon whether the carrier fulfilled its obligations as to methods of procedure established by agreement between the carrier and employes is unquestionable; however, in this case there is no allegation from the employes that the carrier in any manner whatsoever violated its contractual relations with the employes in the procedure followed in disciplining Mr. Thompson, but they are questioning the measure of discipline applied, and, as heretofore stated, the management of this carrier feels that this is a question beyond the powers of your Honorable Board to rightfully interfere with.

OPINION OF THE DIVISION: The facts in this case are not disputed. The records disclose that Machinist Thompson, while off duty, not on company property, and not subject to call was arrested on the streets of Monroe for operating a motor vehicle while intoxicated, was tried, found guilty and fined, and was, after required hearings, discharged by the carrier on August 19, 1937, because of the use of intoxicating liquor contrary to the rules of the carrier.

The carrier's rules of long standing compel applicants for employment to sign an agreement as follows:

"To observe all rules and regulations governing the service to which I may, at any time, be assigned; to pay my bills promptly each month; to maintain strict integrity of character; to abstain from the use of intoxicating liquors; to avoid saloons and places of low resort, or where liquors are sold."

Mr. Thompson agreed to these stipulations when he took employment with the carrier in 1925.

If the above rules were enforced by the carrier, an employe could be discharged for drinking a glass of beer in his own home, or for any number of trivial incidents in no way related to the business of the carrier. That any carrier would attempt to so enforce its rules, when it is not affected by an act of an employe off duty, is not to be expected. That the carrier would have a right to enforce its rules when an act of an employe in violation of the rules clearly and substantially injured the carrier would not, on the other hand, be doubted.

The record does not disclose any real connection between the act of Thompson and any injury to the carrier. He was a shop employe, off duty, when the incident took place. The accident, itself, was evidently trivial. No damage was done by the slight collision. The action of the carrier in discharging Thompson, an employe of twelve years with the carrier, for the reasons given cannot be sustained.

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.

The parties to said dispute were given due notice of hearing thereon.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of May, 1938.