

Award No. 2200

Docket No. 1958

2-CUT-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 150, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement The Cincinnati Union Terminal Company unjustly dismissed Car Cleaner Harry Q. Wright at the expiration of his assignment on Friday, December 31, 1954.

2. That accordingly The Cincinnati Union Terminal Company be ordered to:

a) Reinstatement this employee in the service with all service rights unimpaired.

b) Compensate this employee for the loss of wages retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Car Cleaner Harry Q. Wright, hereinafter referred to as the claimant, was employed as such on May 2, 1947 by The Cincinnati Union Terminal Company, hereinafter called the carrier, and since then the claimant continuously maintained seniority service rights until dismissed from the service at the close of his tour of duty on Friday, December 31, 1954.

The claimant's regularly assigned days of work, hours of work and rest days were 7:00 A. M. to 3:00 P. M., Fridays through Tuesdays, with rest days Wednesday and Thursday. The carrier made the election to take the claimant out of service at 2:30 P. M., thirty minutes before the end of his shift on Saturday, September 11, 1954, although the carrier returned the claimant to his regular assignment the next morning, Sunday, September 12, 1954. However, the carrier summoned the claimant to stand trial on September 20, 1954 for the reasons stated then and which were later reiterated but that date of trial or hearing was postponed from time to time which was finally held on December 13, 1954, and this is confirmed by copy of letter dated December 6, 1954, addressed to the claimant by the general car foreman, submitted herewith and identified as Exhibit A. Consequently, the hearing was

In *Thomas v Houston Co.* (1912), 146 KY, 156, 142 S.W. 214, it was said (at pp 159-160):

"While the employer in every case should exercise fair dealing and kind treatment toward his employes, the latter owes it to the former to be faithful and diligent in the performance of his service, and to obey his reasonable rules within the nature of his employment."

These assertions are in accordance with opinions of other referees of the National Railroad Adjustment Board, who have ruled that the Board will not disturb the discipline administered by the carriers unless it is found that carrier arbitrarily, without just cause, or in bad faith administered it.

First Division Award 15528, Referee Stone stated:

"This Division has held repeatedly that expert testimony is not necessary to prove intoxication and a review of the testimony convinces that the finding of intoxication was not arbitrary. In view of the serious offense and claimant's past record, the discipline assessed was not excessive."

Also see First Division Awards 7182—9542—11854—13008, Second Division Awards 153—1323—1389—1402—16581—1809—1817—1868—1886, and Third Division Awards 71—135—373—891—2766—2770—3827—5034—5799, Fourth Division Awards 257—796.

Carrier has shown that claimant was guilty as charged after a fair and impartial hearing. Responsibility for imposing discipline on employes of the carrier is the responsibility of the carrier. It is respectfully submitted that this Honorable Board should not interfere with the action taken by the carrier in carrying out this responsibility unless such action was so clearly arbitrary as to constitute a violation of the contract with the organization or of the implied functions, powers and prerogatives of management. There is no evidence in this case of malice or bad faith.

The above claim is without merit and is not supported by any rules of the agreement and claim should be denied.

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

The carrier or carriers and the employes 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.

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

Claimant was employed as a car cleaner by the Cincinnati Union Terminal Company. On September 11, 1954, during his working hours, he was found in an alleged intoxicated condition. After many postponements, an investigation was held on December 13, 1954, which resulted in his dismissal from the service. The organization insists that the dismissal was unjustified.

The record shows that about 2:00 P. M. on September 11, 1954, Car Cleaner Foreman Taliaferro found claimant on a bench at Cabin H. Acting Assistant Car Foreman Willenbrink was called. The two (2) supervisors say that claimant had the appearance of one who had been drinking. Neither of them smelled any liquor on his breath and neither of them saw claimant take a drink. They say that claimant admitted he was drinking beer. The evidence is that claimant had difficulty in walking. He was taken to the office

where he staggered around the office and fell on the desk. He became belligerent and told the supervisors when he was taken out of service that there was no one big enough to put him off the property. This is evidence which, if believed, would warrant a finding that claimant was intoxicated. It appears from the record also that claimant had been talked to previously about his drinking without any charges being filed.

Claimant denies that he had been drinking. He says he got dizzy and sat down on the bench at Cabin H and blanked out. He claims that he suffers from dizziness which is the result of a car accident in 1938. He had never mentioned that he was subject to dizziness previously. His employment application made out in 1947 fails to mention such accident or any injuries therefrom.

The evidence is conflicting. It is not the province of this Board to determine the weight of the evidence. The evidence adduced, if believed, is sufficient to support a finding of guilt in the absence of a showing of bad faith. We have found nothing in the record showing any bad faith on the part of the supervisory officers who appeared as witnesses. A denial award is required.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1956.