

Award No. 3081

Docket No. 2774

2-GN-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That under the current agreement Carman James A. Ellis was unjustly dismissed from the service on September 1, 1956, and that accordingly the Carrier be ordered to reinstate him with seniority unimpaired and compensate him for all time lost retroactive to the aforementioned date.

EMPLOYEES' STATEMENT OF FACTS: Carman James A. Ellis, hereinafter referred to as the claimant, was employed by the Great Northern Railway Company, hereinafter referred to as the carrier, for fifteen (15) years prior to September 1, 1956. The claimant was regularly assigned to the 11:30 P.M. to 7:30 A.M. shift, Monday through Friday with Saturday and Sunday as rest days, at Minneapolis Junction, Minnesota.

Claimant was notified on August 3, 1956, by Superintendent of Terminals E. S. Pinkerton that he was to be investigated for allegedly being under the influence of intoxicants and sleeping in his car. A copy of this letter is submitted herewith, identified as Exhibit A.

The investigation was held on August 10, 1956, and a copy of the transcript of hearing is submitted herewith, identified as Exhibit B.

Carrier's Car Foreman E. J. Davis notified the claimant on August 31, 1956, copy submitted herewith, identified as Exhibit C, that he was dismissed from the service, effective September 1, 1956.

This dispute has been handled with the carrier up to and including the highest officer designated by the carrier, with the result he has declined to adjust it.

Q. And do you deny the charge that you had been drinking prior to coming to work on the night of August 1?

A. At what time would you say? **I had about three glasses of 3.2 beer around eight o'clock that evening. . . .**"

It is interesting to note that prior to the above "admission" claimant, on page 14 of this same transcript, **denied that he had been drinking prior to going to work.** The fact that claimant contradicted his own testimony relative to his use of intoxicants prior to his going to work certainly does not lead one to place much confidence in claimant, especially when the three other witnesses expressed firm opinions, based on acute, personal and physical observation, that claimant was under the influence of intoxicants when they found him asleep during working hours.

CONCLUSION

Carrier holds that **claimant caused his own dismissal** through his lack of personal responsibility and his negative behavior as evidenced by his being asleep during working hours, and at the same time being under the influence of intoxicants, both of which actions are in violation of carrier's rules and instructions governing this employe.

Contained in the General Notice of Rules and Instructions for Locomotive and Car Shop, Roundhouse, Repair Track, and Maintenance of Equipment Employees is the statement:

"To enter or remain in the service is an assurance of willingness to obey the rules."

When claimant **admitted that he had violated Rules 12 and 39**, and these admissions were supported by reliable testimony of carrier's witnesses, carrier was more than justified in dismissing him.

As was stated in carrier's statement of facts herein, claimant, **prior to his negative and irresponsible behavior on August 2, 1956, which was the immediate cause of his dismissal**, had every opportunity to change his personal behavior. He had been counseled and advised by his supervisor, and on one occasion in the presence of the local chairman, that carrier was not going to tolerate flagrant violations of carrier's rules and instructions. Obviously, claimant did not heed this constructive advice for if he had he would not have personally created the situation in which he found himself on August 2, 1956, and which situation resulted in his being dismissed from the service of carrier.

For the reasons and evidence contained herein, carrier holds that this claim of the employe is totally lacking in any kind of merit whatsoever and must 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 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 were given due notice of hearing thereon.

Carman James A. Ellis was regularly assigned to the 11:30 P.M. to 7:30 A.M. shift.

On August 2, 1956, at 12:15 A.M., he was found asleep in his car on company property, apparently intoxicated.

On August 3 he was notified to appear for investigation.

An investigation was held on August 10 and evidence was presented tending to show that he was not on duty but on the contrary that he was in a deep sleep; that he was aroused with great difficulty; that his breath smelt of intoxicants and that he was incoherent.

At the conclusion of the hearing the claimant stated in response to a question that the investigation was fair and impartial.

In order to sustain this claim we must find that the Organization has proved that the action taken by the carrier in this case is arbitrary, capricious and an abuse of the discretion vested in management.

The record does not support such a finding.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1959.