

Award No. 3138
Docket No. 2921
2-CB&Q-SM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Sheet Metal Workers)**

CHICAGO BURLINGTON AND QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement the Carrier unjustly dismissed Sheet Metal Worker R. H. Bauman from service on June 12, 1957.

2. That, accordingly, the Carrier be ordered to reinstate Sheet Metal Worker R. H. Bauman to service with seniority rights unimpaired and compensated for all time lost subsequent to June 12, 1957.

EMPLOYEES' STATEMENT OF FACTS: Roy H. Bauman, hereinafter referred to as the claimant, entered the service of the Chicago, Burlington and Quincy Railroad Company, hereinafter referred to as the carrier, as a tinsmith apprentice in March, 1922, and was promoted to tinsmith in June, 1927. Claimant has been working for the carrier in that capacity since that time until removed from service on June 12, 1957.

On June 12, 1957, the superintendent of shops, Mr. C. C. Corneils, addressed a letter, copy submitted herewith and identified as Exhibit A, to the claimant, notifying him that his services are being terminated account violation of Rule "G", for drinking heavily and being convicted of disorderly conduct, unbecoming a Burlington employee.

On the same date, June 12, 1957, the claimant addressed a letter, copy submitted herewith and identified as Exhibit B, to Shop Superintendent Corneils requesting an investigation in accordance with the provisions of the controlling agreement.

The investigation was conducted by Shop Superintendent C. C. Corneils on June 18, 1957, and a copy of the transcript of the investigation, con-

evidenced by this record. Back pay, if awarded, would have to be computed as agreed upon by the parties in Rule 31 of the controlling agreement.

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 has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This claim for reinstatement for Sheet Metal Worker Bauman, an employe with 35 years of service, discharged June 12, 1957, "account violation of Rule 'G' of the Burlington Lines Code of Safety Rules, for drinking heavily and being convicted of disorderly conduct, unbecoming a Burlington employe", is defended by the carrier on two grounds.

The first defense is that there is a "procedural defect, because the claim for reinstatement was never handled with the foreman, general foreman, or shop superintendent, as outlined in Rule 30 of the agreement."

It is provided in general, under Claims and Grievances Rule 30:

(a) "An employe * * * who believes he has been unjustly dealt with * * * shall present the same to his foreman * * * within fifteen days * * *."

If further appeal is desired it shall be handled * * * by the general committee * * * with the general superintendent * * *."

(b) * * * may then be appealed to the Second Division, National Railroad Adjustment Board."

Under Rule 31, Investigations, it is agreed "the provisions of Rule 30 shall be applicable in connection with appeals and time within which appeals shall be made in cases involving discipline or dismissal".

From the record before this Division it is clear that C. C. Corneils, superintendent of shops, discharged the claimant by letter on June 12, 1957. On that same day, Claimant Bauman appealed to Corneils in his request for an investigation. (When the employer took the initiative, it bypassed the foreman and shop foreman. It thereby waived its right to initiate proceedings at the foreman level.) It cannot now, in its submission, here claim the benefits of the provisions waived.

The original decision of the superintendent of shops was affirmed by himself at the conclusion of the hearing on June 18th which is further proof that an appeal was made to him in substantial compliance with the time limits which are the principal content of Rule 30.

As to the investigation itself, we note that the shop superintendent who discharged the claimant conducted the investigation after he had already evidenced his conclusion to discharge. When the shop superintendent became

a witness, his answers as to the claimant's ability and that "his record does not show any previous trouble" show an essential intention of fair dealing. However, his reference to police records from which his conclusions were drawn, without producing either the witnesses or the records deny the accused any opportunity to cross examine or refute the evidence.

With regard to police records, we note in the employees' submission, the first showing of those charges in 1948, 1950 and 1956, which we presume were a part of the information not disclosed at the investigation. A man's entire record should always be available, good or bad as it may be, not to determine his guilt in the instant case, but only to be used in determining the penalty to be assessed. To this extent the carrier's use of the record of conviction was entirely proper.

Finally, we note that although the letter of discharge refers to "drinking heavily" the shop superintendent's final conclusion, given at the investigation, makes no mention of Rule G expressly. This is undoubtedly the true basis for the discharge and is repeated as follows:

"Because of the publicity * * * contrary to all rules * * * and the fact that you were convicted of being disorderly, as you have partially admitted and records indicate * * *".

A misdemeanor conviction in Justice of Peace Court on a charge of disorderly conduct does not, per se, prove any violation of Rule G. The transcript before us fails to show that Rule G was violated.

AWARD

Claim (1) is sustained.

Claim (2) is sustained with reinstatement, seniority rights unimpaired and compensation for any wage loss suffered, to be granted to claimant.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March, 1959.