Award No. 4802
Docket No. 4742
2-CB&Q-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis J. Robertson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L.—C. I. O. (Carmen)

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. The Chicago, Burlington & Quincy Railroad Company violated the controlling agreement by closing out of service John F. Slatton, Carman, 14th Street Passenger Yard, Chicago, Illinois for having been absent from duty without just cause from September 19th to September 23rd, 1963, for allegedly falsifying the record as to the necessity for being absent and for violation of Rule G of the Burlington Lines Code of Safety Rules, September 23, 1963.

2. That accordingly, Carman John F. Slatton be reinstated to service of the Chicago, Burlington & Quincy Railroad Company without loss of seniority, make claimant whole for all pass and vacation rights, pay the premiums (for hospital association dues) for Hospital, Surgical and Medical Benefits for all time held out of service, and pay the premiums for Group Life Insurance for all time held out of service, and compensate the claimant, Mr. John F. Slatton, for all time lost from September 23rd, 1963, until so restored.

EMPLOYES' STATEMENT OF FACTS: Carman John F. Slatton, hereinafter referred to as the claimant, was discharged from the service of the Chicago, Burlington and Quincy Railroad Company, hereinafter referred to as the carrier, by letter dated September 23, 1963:

"for having been absent from duty without just cause from September 19th to September 23rd, inclusive, for allegedly falsifying the record as to the necessity for your being absent and for being found in an intoxicated condition on September 23rd in violation of Rule G of the Code of Safety Rules."

probative value of the evidence produced, the severity of the penalty imposed, the mitigating circumstances, or as a plea for leniency, there is no valid basis for a sustaining award of any character."

The carrier's position as shown, and the record supports its arguments that —

1. The claimant laid off from work for four consecutive days without good cause. Taking a week off to remain intoxicated is not good cause for being off work.

2. Claimant falsified his reason for laying off when he stated he was needed at home to take care of his wife. On the day he laid off his wife was not at home, but was in the hospital. He also did not take care of her, but remained intoxicated.

3. The claimant was guilty of violating Rule G of the CB&Q Code of Safety Rules. This rule definitely has application to excessive drinking which causes absence from duty.

4. The claimant's record of repeated absenteeism, amounting to approximately 20 per cent of his working days, was properly taken into consideration in assessing the penalty against him.

In view of this record, there is no basis whatever for this claim. It must be denied in its entirety.

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.

On September 27, 1963 the claimant was given a notice informing him of his dismissal from the service of the carrier for having been absent from duty without just cause from September 19th to September 23rd inclusive; for allegedly falsifying the record as to the necessity for being absent and for being found in an intoxicated condition on September 23rd in violation of Rule G of the Code of Safety Rules. The clamant requested a hearing on the charges which was held on October 18, 1963. After that hearing the claimant's dismissal was affirmed for the reasons stated in the original notice.

No question is raised with respect to compliance with the discipline rule in the conduct of the hearing. Reduced to essentials it is the employes' position that the evidence adduced at the hearing was insufficient to support the carrier's finding of guilt.

The principles guiding this Board and other Boards of Adjustment in reviewing disciplinary actions are well known. It is not the function of this Board to weigh the evidence and resolve the conflicts therein. If there is sufficient substantial credible evidence adduced at the investigation from which an impartial trier of the facts reasonably could have concluded that the accused was guilty as charged, this Board will not disturb the carrier's finding of guilt.

There is no doubt about the fact that the claimant was off duty on his rest days September 17 and 18, 1963 and that he called in on September 19, 1963 to lay off on his 4-12 job stating that he could not work on that day because of his wife's illness. It is also established without contradiction that when the General Foreman accompanied by a Special Officer visited the claimant's apartment on September 23, 1963 the claimant was found reclining on a bed fully clothed except for his shoes; that another man who admittedly had been drinking was in the apartment with him and there were a number of empty whiskey bottles strewn over the floor.

Obviously, the uncontradicted testimony with respect to the circumstances under which the claimant was found in his apartment on September 23 is sufficient to give rise to a presumption that his failure to report for work was due to his being on a drinking spree. The fact that his wife was actually in the hospital on the 19th and was not released therefrom until the 20th belies the reason for his absence on the 19th as being due to the need to take care of her. The explanation of the empty whiskey bottles being due to his friend having consumed the contents without any sharing by the claimant can hardly be believed against the testimony of the Special Officer and the Foreman to the effect that the claimant's actions on the 23rd were those of an intoxicated person.

We see no need to discuss other aspects of the record which could be weighed by an impartial trier of the facts as pointing to the claimant's guilt. Even considering the belated controversial affidavit of the clamant's companion of the 23rd as part of the evidence (and, it is of highly doubtful admissibility) the reasonableness of the conclusion that the weight of the evidence established the claimant's guilt must be upheld by any standards of review.

The claimant's record leaves much to be desired. In the short period of time he has worked for the carrier he has been absent from work about 20% of the time. In the light of the seriousness of the offense involved and this poor record we can find no basis upon which to interfere with the discipline assessed.

AWARD

Claim 1 and 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1966.

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