

Award No. 5020

Docket No. 4866

2-PULL-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement Electrician Napoleon Bishop was unjustly suspended from service for ten (10) work days commencing August 14, 1964 and terminating August 25, 1964.

2. That accordingly, the Pullman Company be ordered to compensate this employe for the ten (10) days he was suspended.

EMPLOYEES' STATEMENT OF FACTS: Napoleon Bishop, hereinafter referred to as the claimant was employed by the Pullman Company, hereinafter referred to as the carrier, as an electrician on December 1, 1942. Under date of May 19, 1964, carrier elected to notify claimant to appear for a hearing at 8:30 A. M. on May 29, 1964 on the charge that when you reported for work, 1:30 A. M. April 16, 1964:

"You were under the influence of intoxicants."

The hearing originally scheduled for May 29, 1964 was postponed and was rescheduled for June 5, 1964 when it was again postponed and subsequently was held on July 3, 1964. On July 31, 1964, carrier's foreman of the I. C. Yards, F. E. Moore, directed a letter to the claimant advising in part:

"It is my decision, therefore, that you be suspended from service for ten work days commencing August 14, 1964 and terminating August 25, 1964."

This dispute has been handled with all officers of the carrier up to and including the highest officer designated to handle such disputes by the carrier, with the result the carrier has declined to adjust it. The agreement effective July 1, 1948 as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that the suspension of the claimant as of August 14, 1964, was not justified as it was not sustained by the hearing record, therefore the claimant was suspended without cause.

a drink. The evidence of record shows that he was under the influence of an intoxicant when he reported late for work at 1:30 A. M., April 16, 1964.

The claim in behalf of Electrician Bishop is without merit, and it 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 employe or employes involved in the 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.

After a hearing on a charge that when he reported for work on the night of April 15-16, 1964, he was under the influence of intoxicants. Claimant was suspended for ten working days. The claim is that he was unjustly suspended. On this occasion Claimant, who was assigned to the 11:00 o'clock shift, came to the yard at 1:30, two and a half hours late, and asked if he should go to work. The assistant foreman made a written report, in which he stated:

"I looked at him and he did not look as if he was in condition to work. He talked incoherent and as he spoke I smelled the odor of an intoxicant on his breath. As a result of his condition and for his safety sake I sent him home. He started to leave and then came into the shop talking and showed me where his phone number was. He put his bag down and it fell off the bench and a can of Pabst Blue Ribbon beer rolled out. He laughed and put it back in his bag and then left."

At the hearing this report was made part of the evidence, and the assistant foreman confirmed it orally, stating that the Claimant was under the influence of intoxicants, but not that he was intoxicated. The employees call this evidence contradictory because he admitted that he had never known Claimant to be intoxicated, and had never seen him take a drink. There was no contradiction; the fact that the witness had never seen Claimant take a drink had no possible bearing on his being under the influence of intoxicating liquor, nor did the fact that the witness did not consider him intoxicated.

Being intoxicated is not the equivalent of being under the influence of intoxicants; it is the extreme limit of such influence. According to Webster's New International Dictionary, "intoxicated" means "inebriated, drunk". It is a matter of common knowledge and observation that one can be under the influence of intoxicants without reaching the stage of intoxication.

Salis, an electrician, who had been called to work on his rest day because Claimant had failed to report for his shift, stated in writing that he arrived about 12:15, and that shortly thereafter:

"I talked to Elect. Bishop and at no time did I smell liquor on his breath or did I think he was intoxicated."

There is considerable discussion because Salis was apparently paid starting at 12:30. However, according to the record, he was not called until 12:15 and lived seven or eight miles away, and the assistant foreman estimated that he did not report until 45 or 50 minutes later. He could not have been there at 12:15. The record does not show how he came, and he could have arrived very shortly after 12:30, assuming that he drove. But whatever the facts as to time, Salis' testimony that he did not smell liquor on Claimant's breath, and that he did not think Claimant was intoxicated, does not directly dispute the assistant foreman's testimony as to what he smelled or observed. The same is true of other officers who in answer to Claimant's questions stated that they had never seen him take a drink, and of another employe who saw him at some undesignated time after 12:30 that night, and said that he did not know why Claimant was being sent home and had no particular reason to notice his condition, but that;

"As far as if you actually had something to drink, I can't say, because I didn't see you fall down or stagger, and I don't drink, and to me you weren't drinking or intoxicated or anything at all."

The record also shows that on the preceding night Claimant failed to appear for work, and telephoned when his shift was more than half over to ask whether he should report; and that he was late again on the next night. Claimant had various reasons for these three occasions, but coming in such close sequence they suggest a pattern.

There was some discussion about a prior offense; but the record was not introduced and the discipline assessed was not such as to indicate that it was given any substantial consideration. Ten days' suspension cannot be considered a heavy penalty, in view of the fact that the Claimant was apparently not much concerned at losing three days in succession by not reporting on time.

The Claimant's own testimony was unconvincing. His only statement which could be taken as a direct denial was "there was no drinking that night"; but he had some beer with him, and his other testimony was argumentative, irrelevant and somewhat irrational.

However, it is well settled that this Board is not the weigher of evidence, and in these cases the question before it is whether the record contains credible evidence to sustain the decision. See Awards 1831 and 4800. Here there is no doubt that it does, and the Claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.