Award No. 5323
Docket No. 5125
2-NWP-MA-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Machinists)

NORTHWESTERN PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement Machinist D. Gore was unjustly suspended from service on January 30, 1966, and dismissed from service on February 14, 1966.

2. That accordingly the Carrier be ordered to:

(a) Restore Claimant to service promptly with seniority rights unimpaired.

(b) Compensate Claimant for all time lost as a result of improper suspension from service on January 30, 1966, and his subsequent dismissal on February 14, 1966.

(c) Make Claimant whole for all vacation rights.

(d) Pay the premiums (or hospital association dues) for Hospital, Surgical and Medical Benefits for all time held out of service.

(e) Pay the premiums for Group Life Insurance for all time held out of service.

EMPLOYES' STATEMENT OF FACTS: Machinist D. Gore, hereinafter referred to as Claimant, was employed by the Northwestern Pacific Railroad Company, hereinafter referred to as the Carrier, at its Diesel Shop in Petaluma, California, with assigned shift hours 8:00 A. M. to 4:30 P. M., Saturday and Sunday rest days. At the time of his suspension from service on January 30, 1966, and ultimate dismissal on February 14, 1966, Claimant had accumulated seventeen (17) years of faithful service with the Carrier and was 59 years of age.

also to Second Division Award 1638 (Referee Edward F. Carter) which rules on this question as follows:

> "This language does not preclude the deduction of outside earnings. Whether the rules provide for the payment of 'time lost,' 'wages lost,' 'earnings lost,' or any other similar statement, it makes no difference as they all can be reduced to a common denominator under the agreement. The rule applies even though the employe was paid a monthly salary. Whatever the method of calculating the compensation may be, a deduction of outside earnings is required unless there is a clear and definite intention that the adjustment is on some other basis."

The carrier also wishes to call the Board's attention to that part of the claim reading:

> "2. (d) Pay the premiums (or hospital association dues) for Hospital, Surgical and Medical Benefits for all time held out of service."
>
> (e) Pay the premiums for Group Life Insurance for all time held out of service."

There are no provisions in the Current Agreement referring to insurance premiums or hospitalization and life insurance. In this connection, the Board's attention is respectfully directed to Second Division Awards Nos. 4866, 4793, 4771, 4532, 4529 and 3883.

To summarize, the claimant was assigned to work until 4:30 P. M. On his time card he showed quitting at 4:30 P. M. and he claimed and was paid 8 hours. He actually left his post of duty without permission at 2:30 P. M. and went to a bar where he drank intoxicating liquor.

This was a violation of Rule G. Because of his actions the claimant was dismissed from the service of the Carrier.

The carrier respectfully requests the Board to deny the petitioner's request that claimant be reinstated.

(Exhibits not reproduced.)

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 waived right of appearance at hearing thereon.

A formal investigation was held on charges that the Claimant was under the influence of intoxicants in violation of Rule G and dishonesty in violation of Rule 801, both of which are Transportation Department Rules and Regulations. Although the evidence taken at the investigation covered both of the alleged violations, the Carrier by letter dated February 14, 1966, ten days after the conclusion of the hearing, dismissed the Claimant from service solely for violation of Rule G.

It is not clear why the Carrier preferred to dismiss the Claimant for the violation of Rule G alone. We may not surmise Carrier's motivation. We may consider the claim solely on the reasons given by the Carrier for such dismissal notwithstanding the charges upon which the investigation was conducted.

Rule G reads:

> "The use of intoxicants or narcotics by employes subject to duty is forbidden. Being under the influence of intoxicants or narcotics while on duty, or their use or possession while on duty, is sufficient cause for dismissal."

The record of the investigation shows that the Foreman and a Special Agent found Claimant in a bar at approximately 3:40 P. M. although this employe was scheduled to work until 4:30 P. M. Claimant admitted that he had one drink.

At the time of his dismissal Claimant had more than seventeen (17) years of service with the Carrier. There is no evidence that he had ever been disciplined or reprimanded before his dismissal on February 14, 1966. As far as the record shows, Claimant was a satisfactory employe prior to this incident.

While it is true that it may be improper to construe Rule G in the light of various and different degrees of intoxication, it is, nevertheless, proper to consider Claimant's condition in the light of the evidence in the record, and from that to determine whether the penalty is deserving of the offense. And, in this connection, it is also proper to consider Claimant's length of service and his previous work record. From all of the evidence in the record, we conclude that Carrier's penalty of dismissal was too severe, and in this sense it was arbitrary, capricious and unreasonable.

Claimant did absent himself from his work assignment without permission and he did consume one alcoholic drink while he was subject to duty. For this he deserves to be disciplined. He has already been out of service for about twenty (20) months. This is more than adequate penalty under all of the circumstances heretofore reviewed.

AWARD

Dean Gore shall forthwith be reinstated as an employe of the Carrier with seniority and vacation rights unimpaired, but without back pay or other benefits claimed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November, 1967.

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