



Award No. 5642

Docket No. 5622

2-NOPB-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

NEW ORLEANS PUBLIC BELT RAILROAD

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Inspector J. F. N. DuTreil was unjustly dealt with and unjustly dismissed from the service of the Carrier on March 6, 1967, at New Orleans, Louisiana.

2. That accordingly, the Carrier be ordered to reinstate Mr. DuTreil with all rights unimpaired including seniority, vacation, health welfare and life insurance benefits, also compensate him for all time lost because of being unjustly dismissed.

EMPLOYEES' STATEMENT OF FACTS: Carman J. F. N. DuTreil, hereinafter called the claimant, was employed by the New Orleans Public Belt Railroad, hereinafter called the Carrier. At the time of the occurrence of this dispute, the claimant had eighteen (18) years of service with the Carrier. His assigned hours were from 3:00 P. M. to 11:00 P. M.

On February 8, 1967, at approximately 8:00 P. M., the claimant had an accident and was taken to a hospital where he was treated and released on February 11, 1967.

On February 10, 1967, Mr. J. R. Coates, Master Car Builder, wrote the claimant charging him with being intoxicated, failing to perform his duties as instructed and with being involved in an accident. A copy of the letter is attached as Exhibit A.

Master Mechanic R. B. Hecker, under date of February 15, 1967, directed a letter to certain employees, including Master Car Builder J. R. Coates, directing them to be present as witnesses at the hearing. A copy of the letter is attached as Exhibit B.

The hearing was held on February 24, 1967. A copy of the hearing record is attached and identified as Exhibit C.

Upon discharge from the hospital, he was referred to Alcoholics Anonymous. This is evidenced by letter from Dr. L. Burroughs to Mr. Reuther, dated August 7, 1967, copy attached and identified as Carrier's Exhibit L, which was furnished this Carrier by Mr. Reuther.

Mr. Robert J. Fineran, Attorney representing Mr. DuTreil, submitted a letter to Mr. H. J. Kafoed, Acting General Manager of this Railroad, from State of Louisiana, Southeastern Alcoholic Clinic, dated January 4, 1968, copy attached and identified as Carrier's Exhibit M. At that time Mr. Fineran asked Mr. Kafoed to consider returning Mr. DuTreil to work. According to this letter, which is signed by Dr. Povilas Vitenas, Mr. DuTreil has been under Alcoholism Clinic care since May 11, 1967. Dr. Vitenas states that Mr. DuTreil's problem is "chronic alcoholism; passive-dependent personality, chronic anxiety reaction — moderate to severe." He was sent to the Alcoholism Treatment Service on October 16, 1967 for further evaluation and rehabilitation and returned to the Clinic for further treatment after his discharge from Alcoholism Treatment Service. We understand that Mr. DuTreil was confined at Alcoholism Treatment Service for approximately thirty days. While Dr. Vitenas states that Mr. DuTreil agreed to go on Antabuse Therapy on December 1, 1967 and is doing well as far as his alcoholic problem is concerned, he also states that the prognosis is guarded at the present time.

It is Carrier's position that Mr. DuTreil was guilty of being intoxicated during his tour of duty, and that he did not perform his assigned duties. The technicality relied upon by the Organization has no merit, and even if the alleged procedural defect did exist, which is emphatically denied by Carrier, the claimant's rights were not prejudiced thereby. Even if your Honorable Board should decide that a procedural defect did exist, this should not be a fatal defect. The fact that claimant was proven guilty and admitted he had been drinking alcoholic beverages prior to and during his tour of duty must be considered.

Further, a claim on behalf of Mr. DuTreil during a period that he was confined to a hospital or other institution, or while undergoing treatment by doctors, is improper, as he could not be considered available for work during this period.

On several occasions, Mr. DuTreil, his Attorney, and his representative have asked the Management of this Railroad to reinstate Mr. DuTreil to his former position. In view of Mr. DuTreil's previous history of alcoholism and various reports which have been made a part of Carrier's submission, the Management finds it impossible to justify reinstating Mr. DuTreil and has been unable to comply with their requests.

Carrier respectfully requests your Honorable Board to decline this claim.

(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.

The record discloses that this is a discipline case involving the Claimant, who left the property without permission and was charged with failing to carry out his assigned duties and being intoxicated. The record further discloses that Master Carbuilder J. R. Coates investigated the case, filed the charges, testified against the Claimant, and then assessed the penalty of dismissing this Claimant from service.

In this type of case, the scope of our review is limited to: (1) was there a fair and impartial hearing on the property; (2) were the findings made on the property supported by substantial evidence; (3) if the employee is found guilty as charged, was the discipline imposed reasonable. We do not weigh the evidence de novo. (Award No. 13124, Dorsey, Third Division.) In view of the evidence, Master Carbuilder J. R. Coates, did prejudice the Claimant when he assessed the penalty after having testified at the hearing, after having investigated, after having filed the charges, and after having assisted in the prosecution. In view of this evidence, this Claimant should be returned to service with seniority and vacation rights unimpaired, because it can be implied from the record that he did not receive a fair and impartial hearing. However, in view of the fact this Claimant confessed, and for the reason that this claim was reviewed by other officers on the property, he should not have his pay restored.

Finding is that the Agreement was violated.

AWARD

Claimant should be returned to service with seniority and vacation rights unimpaired, but without restoration of pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 7th day of February, 1969.