



Award No. 5658
Docket No. 5589
2-SP-(T&L) '69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

SOUTHERN PACIFIC COMPANY (Texas and Louisiana Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1. That Carman W. H. Higgins was unjustly dealt with when he was removed from service of the Southern Pacific Company (Texas and Louisiana Lines) at Houston, Texas, effective 10:30 P. M., January 12, 1967.

2. That accordingly, the Southern Pacific Company (Texas and Louisiana Lines) be ordered to restore Carman W. H. Higgins to service with seniority unimpaired with all service rights and compensated for all time lost from his assignment on the basis of what he would have earned had he not been dismissed from service beginning 10:30 P. M., January 12, 1967 until he is returned to service.

EMPLOYEES' STATEMENT OF FACTS: Carman W. H. Higgins, hereinafter referred to as the claimant, was employed by the Southern Pacific Company (Texas and Louisiana Lines) at Houston, Texas, hereinafter referred to as the Carrier on December 21, 1954. The claimant's duties consisted of inspecting cars, repairing cars, inspecting loads on and in cars in the Carrier's Houston Terminals.

On date January 12, 1967, the claimant reported for his assignment of duty at 3:00 P. M., and was instructed to go to the Busco Siding Tracks to inspect and work the cars that Train No. 87 was going to pick-up and make the air brake test on the cars in Train 87 after the train was made-up. The train departed Busco Siding, which that siding is within the Houston Terminals about fifteen miles across town from the Englewood Train Yard, which is the point where the claimant starts and stops his assignment of duty. The claimant called in over telephone after the train had departed, and he was instructed to come to Englewood Train Yard, and while the claimant was enroute to Englewood Train Yard; he was instructed over radio for him the (Claimant) to go to the Capital Steel Company, which this plant is about seventeen miles from Busco Siding, and about twelve miles Northwest from Englewood Train Yard. After the claimant arrived at the Capital Steel Plant, the Plant had closed its operation for the day, and the gates into the plant

the use of profane language while employed as a Car Inspector at Englewood Yard December 12, 1958. In this connection he was reinstated to service on March 27, 1959 on a leniency basis; and (3) He was discharged for use and possession of intoxicants and improper use of Company vehicle to transport intoxicants while he was on duty as Car Inspector Aug. 7, 1963, in the Houston Terminals. In this latter case the intoxicants involved was beer and Mr. Higgins was found guilty of transporting beer in a Company truck to a switch crew that worked in the vicinity of Busco. Again the Carrier representative granted this man leniency after a thorough discussion of Mr. Higgins' obligation to the Company in not using intoxicants while on duty and he was reinstated to service September 21, 1963. It is obvious that the Claimant in this case cannot control his drinking habits which interfere with his obligation to this Carrier. This Carrier must retain in its employment persons who are particularly competent, stable and faithful. It must make sure that those employed continue to measure up to these requirements and are alert in the observance of rules prescribed to guide and direct their activities. To that end, resort must occasionally be had to discipline. The method, means and measure of discipline, however, of necessity will vary upon consideration of many factors, the most important of which is the employees' past record. In view of the seriousness of the instant offense and Mr. Higgins' failure to live up to his promises of mending his way in prior cases where he was reinstated on a leniency basis, we must assume that he is unreliable and was properly separated from the service permanently.

The Carrier submits Mr. W. H. Higgins should not be reinstated on any basis and he is acting unreasonable and in bad faith by requesting it. Should the board feel otherwise, and erroneously reinstate Mr. Higgins with pay, notwithstanding the Carrier's position in this matter, then and in that event, the Carrier should be allowed to deduct the amount of any compensation earned in outside employment during the period in question. In this connection we refer to the current Agreement, Rule 34 (d) (Copy of which is on file with your Board) and Second Division Award No. 1638 which ruled on this particular point.

The Carrier asserts that the employee's claim is without merit and we respectfully request your Honorable Board to so decide.

(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 employee or employees involved in this dispute are respectively carrier and employee 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.

This is a discipline case. W. H. Higgins, Claimant, held a regular assignment as Car Inspector, Houston Terminals, 3:00 P. M. to 11:00 P. M., January 12, 1967. He was dismissed from service, effective that date, after a due and proper investigation on the property, for using and being under the influence of intoxicating liquor at about 10:30 P. M., date of discharge, as reported by Asst. Master Car Repairer D. L. Jones.

The Board has reviewed the transcript of the investigation and the written submissions of the parties.

Claimant appeared at the appointed time and place for investigation. General Chairman E. C. Wolff, and Local Chairman E. B. Adams, appeared with him and in his behalf. Asst. Master Car Repairer Jones and Asst. Trainmaster A. Rust appeared to support the action of Mr. Jones in taking Claimant out of service at a roadside cafe while on duty and under pay. Assistant Superintendent, R. J. Rohlf conducted the investigation.

Claimant's version of the incident is that he had completed the last assignment on his regular tour of duty, was enroute to Englewood to report off, and had stopped to take his delayed meal period at the first opportunity and convenient place, about 10:30 P.M., after starting to work at 3:00 P.M. that afternoon. He had ordered a sandwich and one beer when Mr. Jones and Mr. Rust unexpectedly entered the cafe; that he had not been drinking and was not under the influence of intoxicating beverage at the time and place in question, nor was he engaged in drinking or preparing to consume a intoxicating beverage when confronted.

Mr. Jones and Mr. Rust had been looking for Claimant to check on his condition after Mr. Jones had been alerted to some difficulty which Claimant was having with instructions that were being transmitted to him over the radio by the Car Foreman. Mr. Jones gained the impression, from the conversation overheard by him, that Claimant was incoherent and was not able to communicate effectively. When Claimant was discovered at the cafe, Mr. Jones' first opinion, that Claimant used intoxicants and was under the influence of intoxicants while on duty, was confirmed to his satisfaction, and he suspended Claimant then and there, subject to an investigation.

The opinion formed by Mr. Rust first hand, based upon what he saw and observed of Claimant's actions and condition when Claimant got out of the company-owned truck and went into the cafe, and while on the premises, confirms and corroborates Mr. Jones' opinion that Claimant was drinking and under the influence of intoxicating liquor while on duty and under pay.

The "opinion evidence" relied upon by Carrier in this case, over the Employes objections, would have been properly entertained in a court of record and should be given the same consideration in an administrative proceeding.

Claimant's past service record has been reviewed by the Board to determine whether or not discipline other than dismissal from service would be administratively proper in this case. The record conclusively proves that Claimant cannot control his drinking habits and, therefore, Carrier should not be under the continuing burden to continue him in its service after repeating an offense for which he has been shown leniency in the past.

AWARD

Claim (1) denied.

Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1969.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.