



Award No. 5704

Docket No. 5505

2-Pull-EW '69

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Electrician Napoleon Bishop was unjustly dismissed from the service of The Pullman Company on January 20, 1967.
2. That accordingly, The Pullman Company be ordered to restore Electrician Napoleon Bishop to the service and pay him for all time lost from January 20, 1967, until returned to service, including vacations, health and welfare benefits, and any other benefits due him under the provisions of the current working agreement.

EMPLOYEES' STATEMENT OF FACTS: Napoleon Bishop, hereinafter referred to as Claimant was employed by The Pullman Company, hereinafter referred to as Carrier, as a car cleaner on December 24, 1937, and as an electrician on December 1, 1942. Under date of September 25, 1966, Carrier elected to notify Claimant to appear for hearing in the office of Foreman Moore, 1501 So. Indiana Avenue, Chicago, Illinois, October 28, 1966, on the charge that during your tour of duty as an electrician in the Illinois Central yards, Chicago, Illinois, September 25, 1966:

"You were under the influence of intoxicants".

as indicated on page 1 of Exhibit A attached hereto.

The hearing originally scheduled for October 28, 1966 was postponed and was rescheduled for January 6, 1967, and following the hearing, in letter dated January 20, 1967, Assistant Superintendent G. E. Wells informed Claimant that he was discharged effective with the date of the letter. A copy of this letter is submitted and identified as Exhibit B.

On January 25, 1967, a letter from Napoleon Bishop was received by General Chairman R. E. Mason, requesting that the decision of Mr. G. E. Wells be appealed. This letter is submitted and identified as Exhibit C.

A letter dated February 8, 1967, General Chairman Mason notified Mr. R. J. Wurtlitzer that the decision of Mr. G. R. Wells was being appealed

witnesses working around and with the claimant testified that they did not know whether claimant had been drinking or not . . . From the evidence of record we find no doubt but what the claimant was drinking in violation of Rule G . . ."

Additionally, First Division denial Award 20546 (Moore) should be noted, as follows:

"The penalty was not excissive. The claimant had been disciplined previously for violating Rule G. Where it appears that an employe cannot refrain from drinking, the carrier is justified in dismissing him from service."

Also see First Division denial Award 20597 (Abernethy).

The Company refers the Board to Third Division denial Award 10049 (Dugan), as follows:

"The traditional position of the Board is that it will interfere with the exercise of disciplinary power by the Carrier only when such action is arbitrary and capricious. It is also not the province of the Board to weigh conflicting evidence. In light of such limited review, comparable to that exercised by appellate courts the claim must be denied especially in view of the fact that testimony of a layman that a man smells of liquor, is unsteady on his feet and his eyes are bloodshot is competent evidence to sustain a conviction of being under the influence of intoxicants in a court of law."

All other comparable awards of the National Railroad Adjustment Board bearing upon the point at issue in this case are, by reference, made a part of this submission.

CONCLUSION

In this ex parte statement, the Company has shown that Napoleon Bishop, Chicago District, was subject to the discipline rule, Rule 52 of the Agreement, when he was under the influence of intoxicants during his tour of duty as electrician in the Illinois Central Yard, Chicago, on September 25, 1966. Further, it is shown herein that Bishop's intoxicated condition was observed by officials of The Pullman Company and of the Illinois Central Railroad Company who were experienced in the handling and observance of such matters and who were able to give firsthand reports of Bishop's condition. Also, the Company has shown that there is considerable corroboration in the total testimony submitted in the Company's Exhibit A. Additionally, the Company has shown that in measuring the discipline to be assessed upon Napoleon Bishop, Management correctly gave consideration to previous instances of a similar nature appearing on Bishop's service record, which procedure it has been shown herein is confirmed by awards of the Second and of other Divisions of the National Railroad Adjustment Board. Finally, it is proved herein that the action taken by Management with Napoleon Bishop was not unjust treatment of the former employee.

(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.

Claimant, a regularly assigned electrician, was dismissed from Carrier's service for being under the influence of intoxicants while on duty in the Illinois Central yards, Chicago, Illinois on September 25, 1966.

Charges were preferred against claimant on September 25, 1966 and an investigation was duly scheduled for October 28, 1966, which was ultimately postponed until January 6, 1967. Both claimant and his duly authorized representative appeared and participated the investigation. Thereafter, claimant was notified by letter dated January 20, 1967 of his dismissal from service of Carrier.

The instant claim was duly filed and processed on the property and is properly before us for determination. The gravamen of Petitioner's position is that Carrier failed to sustain the burden of proving the charge against the claimant because no witnesses observed the claimant with alcohol in his possession while on duty, and that the testimony of various witnesses concerning his condition was merely hearsay. Furthermore, Petitioner contends that Carrier would have sent claimant home from work had he been under the influence of alcohol as alleged by Carrier.

The statements of Carrier's Shop Superintendent and claimant's immediate supervisor which were introduced at the investigation, as well as the oral testimony of the latter, were to the effect that claimant appeared to be in an intoxicated condition. Claimant denied drinking, but testified that he was under the influence of medicine prescribed by his physician for relief of pain from his right knee and ankle.

Although no medical tests were made to determine whether claimant was actually intoxicated, laymen are competent to make such a determination. Third Divisions Awards Nos. 15574, 10928 and 8993. Here, both Carrier witnesses agreed as to the condition of claimant, and such evidence is of probative significance.

Petitioner urges that the ultimate penalty of dismissal was unreasonable and without just cause. We have noted claimant's prior record of similar offenses and we find no valid basis for substituting our judgment for the disciplinary action invoked by Carrier. Accordingly, the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1969.
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