



Award No. 5885

Docket No. 5830

2-WP-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 117,
RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO
(ELECTRICAL WORKERS)**

THE WESTERN PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Communications Maintainer D. E. Holton was unjustly treated when he was dismissed from service on February 9, 1968, for allegedly being under the influence of intoxicants while on duty and absenting himself from duty without proper authority on January 22, 1968.
2. That accordingly, Carrier be ordered to:
 - (a) Restore the aforesaid employe to service, with all service and seniority rights unimpaired, and compensate him for all time lost,
 - (b) Reinstate all vacation rights for the aforesaid employe.
 - (c) Pay Western Pacific Employes' Hospital contributions, including dependents' hospital, surgical, medical and death benefit premiums, for all time that the aforesaid employe is held out of service.

EMPLOYEES' STATEMENT OF FACTS: Communications Maintainer D. E. Holton, hereinafter referred to as the claimant, was regularly employed by the Western Pacific Railroad Company, hereinafter referred to as the carrier, and regularly assigned, prior to February 9, 1968, as an equipment repairman under the supervision of Mr. R. E. Enger, superintendent, communications department, with headquarters at San Francisco, California.

The record shows that on the morning of January 22, 1968, claimant arrived on the property at his normal work location at approximately 7 A.M., but due to a reaction of a drug previously prescribed by his physician, when mixed with alcoholic beverage consumed on his rest day, January 21, 1968, which he was not aware would happen, claimant has no recollection of his actions on the morning of January 22, 1968 and for the next two days thereafter.

Under date of January 30, 1968, claimant was apprised by letter that he was being charged with allegedly being under the influence of intoxicants

2. Claimant did not request nor was he granted permission to be absent from duty during the period January 22 through January 29, 1968.
3. January 22, 1968 is not the first time that claimant's behavior was abnormal during working hours. Claimant admitted this fact to his own personal physician.
4. Claimant had been previously admonished for his unusual behavior indicating intoxication during working hours and was fully aware of the consequence should he continue to do so. (See Carrier's Exhibit "F")

In view of the above facts, there is no question but that claimant's dismissal was fully justified. Therefore, carrier strongly urges the instant case be denied in its entirety.

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.

Claimant, a Communications Maintainer, was dismissed from Carrier's service for being in violation of Rules "G" and 811. The latter rule deals with an employe absenting himself from duty without proper authority.

The record shows that Claimant arrived at his usual work site at 7:00 A.M. although his shift was not scheduled to start until 8:00 A.M.; that three of Carrier's employes, Communications Supervisor O. R. Fredericksen, Network Supervisor D. W. Chesworth and Chief Clerk, Tax Department, Gordon Engle, all testified that Claimant was under the influence of intoxicants on the date in question; that Claimant left at 7:15 A.M. and returned again about 8:05 A.M. and left a second time at about 8:25 A.M., returning to the job at about 8:35 A.M. and leaving a third time about 9:00 A.M. without returning on the date in question; that he talked about quitting a number of times to Communications Supervisor Fredericksen before leaving Carrier's premises on said date.

The Organization's main defense to the charges is that Claimant was not accountable for his actions on the morning in question inasmuch as he had been taking drugs as prescribed by a physician for an illness and suffered a reaction when he consumed a small quantity of alcoholic beverages on his rest day, the day preceding the date involved herein.

In support of its position the Organization relies on the statement of Curtis E. Smith, M.D., dated February 5, 1968, in regard to his treatment of Claimant, attached to the record and marked "Exhibit J", and it reads as follows:

"CURTIS E. SMITH, M.D.
RUTH FLEMING, M.D.
ROBERT H. BACON, M.D.
490 Post Street
San Francisco 94102

Feb. 5th, 1968

In Re: Mr. Dewey Holton

"To Whom It May Concern:

"I have known this man for a number of years and have admired his ability and intelligence. I have studied patients of his type for many years and they do not indulge in alcohol for any pleasing effect but as an "escape mechanism" from the sordid realities of life. This does not mean that they should drink for the after effects are often worse than those who drink for 'pleasure'.

"On Sunday Jan. 21st he had a few drinks that afternoon. He was also taking certain medicine for nervousness. He does not keep any alcohol at home and had none after that afternoon. The next morning, Monday the 22nd he definitely had influenza with sore throat and congestion in the lungs. In spite of this he reported for work at an early hour and according to him everyone thought he was drunk. By that time all effects of alcohol should have disappeared but with the fever and drugs for nervousness he had absolutely no recollection of his actions that morning. This was amnesia.

"On Jan. 25th I examined him. His throat was red and there was still some congestion in the lungs. His blood pressure was slightly elevated and there was a trace of albumen and sugar in the urine.

"On Feb. 1st I saw him again. He had improved with mild tranquilizing drugs but still had sugar in the urine. This will be investigated further.

"I respectfully submit that this is a medical problem.

Sincerely,

/s/ CURTIS E. SMITH, M.D."

Carrier's Superintendent, R. E. Enger, requested a clarification of said statement of February 5, 1968, and Dr. Smith replied by letter, dated February 9, 1968, addressed to Mr. Enger, and which provides as follows:

"CURTIS E. SMITH, M.D.
RUTH FLEMING, M.D.
ROBERT H. BACON, M.D.

February 9, 1968

"Mr. R. E. Enger
Superintendent of Communications
Western Pacific Railroad Company
526 Mission Street
San Francisco, California 94105

Re: Mr. D. E. Holton

"Dear Mr. Enger:

"I did not see or hear from this man until January 25th when he still had evidence of influenza. The rather amazing thing is that he never made any attempt to alibi regarding the charges against him.

"His original story was, 'On Monday, January 22nd, I had a sore throat, fever and cough. For some reason I went to the Western Pacific office very early. I was abusive to a number of fellow workers without reason and everyone thought I was drunk. I had reported for work while drinking before, but I have absolutely no recollection of my actions that morning.

"With his attitude of self-accusation, I questioned him further and he stated that he had some drinks at a bar Sunday, January 21st, went home, slept all night and had no more drinks on January 22nd. He claims that he never keeps liquor at home. He had been upset about some family affairs, and underneath is quite a sensitive person.

"On January 25th and February 1st, he had some sugar in the urine, but not enough to produce a diabetic coma.

"If he has another chance I shall 'ride herd' on him which may include sending him to a very practical psychiatrist.

Sincerely,

/s/ CURTIS E. SMITH, M.D.

"P.S. he had been taking some 'nerve pills; but probably not enough to produce this reaction."

Close perusal of Dr. Smith's statements show that Claimant herein clearly had a "drinking" problem, and that he admitted to Dr. Smith, as quoted in Dr. Smith's letter to Superintendent Enger: "I had reported for work while drinking before, * * * * *." Dr. Smith states that Claimant's problem is a medical problem. However, Dr. Smith did not see the Claimant on the date in question and didn't examine him again until January 25th, three days after the incident in question. Nevertheless this does not excuse Claimant's actions on the date in question. Claimant had the clear-cut duty of reporting to work ready and able to work in a normal and usual manner. If he was sick, then he readily could have called or had someone notify Carrier of his physical incapacity. Choosing to come to work in an intoxicated manner and/or under the influence of "drugs" so that he was unable to perform his work duties and leaving his job without proper authority subjected Claimant to discipline. Therefore, Carrier clearly met its burden of proving the charges levied against Claimant in this instance.

We do not find that Carrier's penalty of "dismissal" was excessive or too severe in this instance, especially in view of the fact that Claimant had previously been admonished by Carrier regarding his erratic behavior and permitting his use of alcohol to interfere with his work. Thus not finding said penalty of dismissal unjust, arbitrary or unreasonable, we are compelled to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of April, 1970.