

Award No. 6203
Docket No. 6054
2-BN(GN)-EW-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electricians)

BURLINGTON NORTHERN, INC.
(Formerly Great Northern Railway Company)

DISPUTE: CLAIM OF EMPLOYEES:

1. That in violation of the current Agreement, Communications Crew Foreman R. D. Woodward was unjustly dealt with when the Carrier refused to allow him to return to carrier service on June 5, 1969, and arbitrarily dismissed him from the service of the carrier on July 29, 1969.

2. That accordingly, the Carrier be ordered to restore Communication Crew Foreman R. D. Woodward to service with all benefits, rights, privileges and seniority unimpaired and that he be compensated for all time lost subsequent to June 5, 1969.

EMPLOYEES' STATEMENT OF FACTS: Communications Crew Foreman R. D. Woodward, hereinafter referred to as the claimant, was employed by the Burlington Northern, Inc. (formerly Great Northern Railway Company), hereinafter referred to as the carrier, in carrier's Communications Department. Claimant was assigned as foreman of Communications Crew CG03 with headquarters at Seattle, Washington.

On May 29, 1969, the claimant left the crew to go to his home at Whitefish, Montana. The crew was working in the Delta-Everett area at this particular time which is now in carrier's Pacific Division. The claimant intended to return to the crew on June 2, 1969, after spending the week-end at his home, which incidentally, also included May 30, 1969 (Decoration Day).

However, due to circumstances beyond his control the claimant was unavoidably kept from work on June 2, 1969, and therefore did not return to the crew. The reason for the claimant's absence from duty was the fact that he was confined in bed at his home due to illness and was under a doctor's care.

In the light of the complete record as herein and herewith set forth, the Carrier reiterates its contention that the claimant was found guilty of the offense with which charged and that the seriousness of the offense, viewed in conjunction with his unsatisfactory past record, amply justified his dismissal from service. The claim for reinstatement with restoration of rights and pay for time lost should therefore be denied.

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, after hearing was dismissed on July 29, 1969 for violation of Rule 702, the pertinent portion of which is cited as follows:

"702 — Employes must report for duty at the designated time and place . . . They must not absent themselves from duty, exchange duties with or substitute others in their place, without proper authority."

Claimant's defense consists essentially of invocation of Rule 21 cited below:

"RULE 21.

ABSENCE FROM WORK

In case an employe is unavoidable kept from work he will not be discriminated against. An employe detained from work on account of sickness or for other good cause shall notify his immediate supervisor as early as possible."

The record in this case has a single vital deficiency, so critical as to make it impossible for this Board to define the grounds essential and prerequisite to rendering either a sustaining or a denial Award. For that reason the Board, while retaining jurisdiction, is remanding the dispute back to the local representatives of the parties, and directing them to supply the Board with the critical piece of information it needs.

Remand has been ordered for the reasons set forth below:

- (1) On the evening of May 29, 1969, a Friday, Claimant returned to his home in Whitefish, Montana, and was due, but did not report back to work on June 2, 1969.
- (2) Claimant states he was bedridden with an illness, kidney infection, beginning on June 2, 1969 and supplied a statement of his physician confirming same, and which stated that Claimant was seen by his physician on June 2, 1969 and June 10, 1969.

- (3) Claimant alleges he tried to contact Carrier on June 2, 1969 but Carrier has no record of same.
- (4) Claimant did speak to his supervisor on June 4, 1969 who could not understand what Claimant said, but who did state that Claimant said that he (Claimant) wished to return to work. In addition, Claimant telephoned again on June 5, 1969 and again his supervisor had difficulty making out quite what Claimant was saying, but supervisor did tell Claimant that an investigation notice had been issued, and that he (Claimant) had been placed out of service.
- (5) On June 5, 1969, two representatives of Carrier delivered in person to Claimant a telegram — Notice of Investigation, dated June 4, 1969, in re alleged violation of rule 702, and both Carrier representatives stated as their opinion, that Claimant had been drinking for some time, and was then on June 5 under the influence of an intoxicant, presumably alcohol.
- (6) On June 5, 1969 Carrier placed Claimant on out of service status pending investigation by a written communication.

The above summary caused the Board to make 3 findings as follows:

- (A) The Board notes that Claimant's desire to return to work on June 5, at which time he testified he was still ill, is a pertinent contradiction subject to a number of equally reasonable but contradictory interpretations.
- (B) The Board further finds similarly that Claimant's insistent denial that he had been taking alcoholic intoxicants and that his denial that he was intoxicated because of alcohol abuse on June 5, 1969, is in contradiction to the observation and opinions of two carrier representatives.
- (C) Finally the Board notes that Claimant's assertion that he received medication from the treating physician, the side effects of which caused him to "be out of his head" or "like I was drunk," is either factual or it is not.

The Board finds that all three issues above could have readily been clarified on the record by simply obtaining either at the hearing, or subsequently, from the Claimant, first a letter authorizing his physician to release to his union representative and a carrier representative all information on these matters. Both representatives could then have addressed inquiries via mail to said physician. In this way there could have been made available evidence bearing on these events which would be highly illuminating. This finding is made without prejudice, either as to whether carrier did or did not possess just and sufficient grounds for its actions, or as to the validity or lack of validity of Claimant's statements and testimony.

In view of the above, and as noted previously, the Board is remanding the dispute back to the local representatives of the parties and directing them to jointly obtain a letter from Claimant authorizing his physician to release information regarding himself to the parties, and then to obtain from Dr. David

B. Kauffman, the physician who treated the claimant, the following information:

- (1) On what date did Claimant first contact physician, and what information or complaint if any was provided to physician as to claimant's physical condition at that time?
- (2) What medical findings were made by the physician of Claimant on June 2, 1969, and what were the grounds for said findings, and were any tests made to ascertain his condition, and if so what did they reveal?
- (3) What medication if any, and in what quantity were they given, to Claimant by the doctor, and what amounts were prescribed daily, and does such medication have significant side effects such as to cause an appearance of intoxication; i.e., blurring of speech, unsteady gait, a confused mental state?
- (4) Were there any reason or grounds for the physician concluding that Claimant had imbibed alcoholic beverages during the period June 2 to June 10, 1969, or that he had been intoxicated by alcoholic beverages, for all or part of that period?
- (5) What medical findings did the physician make of Claimant on June 10, 1969 and what were the grounds for same, and if any tests were made of Claimant's condition, what were the results, and finally, what direction did physician give to Claimant as to his returning to work?

When the above information is received it is to be forwarded to the Executive Secretary of the Second Division of the National Railroad Adjustment Board, for transmittal to members of this Board.

AWARD

Claim and Award held in abeyance pending receipt of information described above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November, 1971.