Award No. 6236
Docket No. 6095
2-SP(PL)-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

SOUTHERN PACIFIC TRANSPORTATION COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Car Inspector George Hathaway, hereinafter referred to as the Claimant, was unjustly deprived of his service rights and compensation when he was improperly discharged from service under date of January 28, 1970 after seven (7) years' service with the Carrier.

2. That the Carrier be ordered to:

(a) Restore the aforementioned Claimant to service with all service and seniority rights unimpaired, and be compensated for all time lost retroactive to January 11, 1970 when he was removed from service pending hearing and subsequently dismissed on January 28, 1970.

(b) Grant to the Claimant all vacation rights.

(c) Assume and pay all premiums for hospital, surgical and medical benefits, including all costs for life insurance.

(d) Pay into the Railroad Retirement Fund the maximum amount that is required to be paid an active employe for all time he is held out of service.

EMPLOYES' STATEMENT OF FACTS: Car Inspector G. Hathaway, hereinafter referred to as the Claimant, was employed by the Southern Pacific Transportation Company, hereinafter referred to as the Carrier, and at the time of dismissal had seven (7) years' service with the Carrier at Sacramento and Roseville, California.

The carrier reserves the right, if and when it is furnished with the submission which may have been or will be filed ex parte by the petitioner in this case, to make such further answers as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this the carrier's initial submission.

FINDINGS: The Second Division of the Adjustment Board, after 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.

This discipline case arises out of claimant's dismissal from service on January 28, 1970 after seven (7) years of employment with the Carrier. The discharge was imposed because of claimant's alleged violation, on January 11, 1970 of Rule G, Rules and Regulations of the Transportation Department of the Carrier, which reads:

> "The use of alcoholic beverages, intoxicants, or narcotics by employes subject to duty, or their possession or use while on duty is prohibited.
>
> Employes shall not report for duty under the influence of any drug, medication, or other substance including those prescribed by a doctor or dentist, that will in any way adversely affect their alertness, coordination, reaction, response or safety. . . ."

Petitioner challenges the validity of the charges made against the claimant. It questions the propriety of relying on the opinion of lay persons to determine that claimant had appeared for work on the morning of January 11, 1970, in a condition which revealed that he had violated the first paragraph of Rule G. It urges that the Carrier's action was in violation of Rule 39 of the Controlling Agreement in that it was unjust, excessive and arbitrary in view of the improper basis therefor, and the fact that the claimant's employment record was clear of any infraction of Rules, and that the claimant be awarded the remedies set forth in the claim.

Petitioner and claimant were afforded a full and complete hearing in accordance with Rule 39, and we can find no fault with the record of the proceedings below.

The minutes of the hearing on the property are very definitive. On the morning of the incident, claimant admitted to supervision that he had imbibed in spiritous liquors prior to reporting to work at shortly before Midnight, albeit that at the hearing, he testified that this took place approximately six hours earlier. He also volunteered the fact that he had taken

prescribed medication for certain conditions for which he was being treated by a physician, albeit that he was not aware of the contents of the medicines and their possible effect upon his "alertness, coordination, reaction, response or safety." It is quite likely that the combination of the alcoholic beverages consumed earlier that night and the medication he took prior to coming to work would have resulted in the condition in which he was observed by supervision. We must, therefore, hold that the claimant violated the specific terms of Rule G, in that he appeared for work under prohibited influences.

In awards too numerous to cite, we have held that carriers must take appropriate steps to assure the safety of the public it serves, the people it employs, and the property it owns. Employes who appear for work in an unfit condition to perform their duties properly are jeopardizing the safety of many people, as well as themselves, if permitted to pursue their assigned tasks. We cannot fault supervision for showing due caution when claimant appeared to be in a questionable state, and particularly after he admitted partaking of intoxicants and medication prior to reporting for duty.

As stated, we find that the record sustains a holding that the claimant violated Rule G. But this Rule does not set forth the punishment which will be meted out to transgressors, and, perhaps, rightly. This Rule recites a number of prohibited acts. It does not appear just that the same penalty should be applied for all of them. We have made extensive efforts to establish an equitable system for industrial discipline. We have found that harsh or excessive measures arouse a negative rather than a positive response to our endeavors to bring about satisfactory performance on the part of employes.

This Board has regularly refused to interfere with the determination of the employers as to disciplinary action taken for proven infractions. But we reserved the right to correct a penalty which is excessive or unreasonable in the premises. See Awards 5703 (Ives) and 3894 (Daugherty). In Award 3894, Referee Daugherty states:

> ". . . Carrier's decision to discharge Claimant may not be held to have been unreasonably related to (a) the nature of claimant's proven offense or (b) claimant's past behavioral record."

In applying these principles, we find that dismissal from service of the claimant was excessive and unreasonable. It was his first offense of any kind recorded. He unquestionably showed bad judgment in imbibing intoxicants early in the evening prior to reporting for work at a time when he was taking prescribed medication. We believe that a prolonged lay-off from work will serve to impress upon the claimant and others that compliance with reasonable and necessary rules is essential if they are to maintain continuous employment and earnings.

AWARD

1. Item 1 of claim is granted in that claimant was unjustly discharged.

2. Car Inspector George Hathaway shall be recalled to his position with the Carrier immediately upon receipt hereof. He shall be credited with all time served and time lost for purposes of seniority, but he shall

not be compensated for time lost between January 11, 1970 and the date he returns to work, nor shall he receive any vacation pay for the lost time period. The Carrier is not required to pay any insurance premiums or contribute to the Railroad Retirement Fund for the claimant for the period January 11, 1970 until the date he returns to its service.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of February, 1972.

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