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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6410
Docket No. 6260
2-SPT(T&L)-EW-'72

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when the award was rendered.

Parties to Dispute: { System Federation No. 162, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Electrical Workers)
{
{ Southern Pacific Transportation Company (Texas &
{ Louisiana Lines)

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company unjustly, improperly and without just cause removed from the service of the Carrier Electrician E. L. Bayless.
2. That, accordingly, the Carrier be ordered to reinstate Electrician E. L. Bayless to his former position with seniority rights unimpaired and that he be compensated for all wages lost beginning May 28, 1971 and continuing until such time as he is properly restored to service, plus six per cent (6%) interest per annum of the amount due and all fringe benefits attached to his former position.

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 in this case was dismissed on June 15, 1971 for violation of Rule 10 in that he was alleged to have been under the influence of intoxicants while on duty. The incident in question occurred on May 28, 1971 and the investigation was held on June 10, 1971, resulting in the dismissal.

The transcript of the hearing held on June 10, 1971 indicates a painstaking effort on the part of the hearing officer to afford Claimant and his representatives a fair and impartial hearing. Claimant's position was that he was under medication prescribed by his doctor and not under the influence of intoxicants as alleged by the Carrier. Rule 10 of the Rules for Employees of the Mechanical Department states:

- "10. USE OF LIQUORS - The use of intoxicants or narcotics by employes subject to duty is forbidden. Being under the influence of intoxicants or narcotics while on duty or their use or possession while on duty, is sufficient cause for dismissal."

The record of the hearing indicates that it was not only well conducted, but that substantial evidence was adduced in support of the charge. We find no fault, therefore, with the process in the handling of this disciplinary situation.

There remains, then, the question of whether the penalty imposed by the Carrier was arbitrary or unnecessarily harsh. We recognize that the Rule cited above permits discharge for this type of violation. But the Claimant had almost twenty-two years of service, was 64 years old and apparently had an unblemished record with the Carrier. It is our judgement, based on these facts that the penalty "did not fit the crime", that it was unnecessarily harsh. Since the Claimant had some medical problems just prior to his discharge, we shall condition his reinstatement on his being physically able to perform his job; we shall grant the Carrier the option of requiring a medical examination to make this determination.

A W A R D

1. Claimant shall be reinstated, with seniority rights unimpaired, but with no back pay.
2. The Carrier may, if it so desires, require a medical examination prior to reinstatement in accordance with the Findings above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November, 1972.