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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6444
Docket No. 6236
2-N&W-CM-'73

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. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Norfolk and Western Railway Company
((formerly New York, Chicago and St. Louis Railroad)

Dispute: Claim of Employees:

- (1) That under the current working applicable agreement Carman Edwin Shultz was unjustly dealt with when he was held out of service prior to the investigation, and, consequently, was unjustly charged in an investigation, conducted in the office of the General Foreman, Madison, Illinois Yard, on Monday, April 20, 1970, and discharged from service upon receipt of letter under date of May 11, 1970.
- (2) That accordingly the Carrier be ordered to immediately restore Carman Edwin Shultz to service and to his former position, with seniority unimpaired, fringe benefits; and that the Carrier pay Carman Edwin Shultz eight (8) hours at pro-rata rate of pay of his former position for April 9, 1970 and for each work day thereafter until he is restored to service and in addition to the money amounts claimed herein, the Carrier shall pay Carman Shultz an additional 6% per annum compounded annually on the anniversary date of claim.

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 was dismissed from Carrier's employment. He was alleged to have violated Rule G. of the Operating Rules of the Carrier which read in part:

"The use of intoxicants by employees subject to duty ...
is prohibited."

Claimant was afforded a hearing pursuant to Rule 33 of the Controlling Agreement, at the conclusion of which he agreed that it had been fairly conducted.

Petitioner vigorously sought to overcome the testimony of Carrier witnesses and the damaging admissions of the Claimant himself. This Board has long been guided by the principles set forth in First Division Award 16785 (Loring) as follows:

"In these investigations as to whether a discharge was wrongful, the Carrier is not bound to prove justification beyond a reasonable doubt as in a criminal case or even by a preponderance of evidence as does the party having the burden of proof in a civil case. The rule is that there must be substantial evidence in support of the Carrier's action."

The Supreme Court of the United States enunciated the substantial evidence rule. It stated:

"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (Consol. Ed. Co. vs. Labor Board 305 U. S. 197, 229)"

We have consistently asserted our concern for the need to secure and retain the public's faith in and continued patronage of rail transportation. At stake is the livelihood and welfare of a great many people. To this end we have afforded reasonable latitude to carriers in their administration of discipline of employees in an effort to assure proper, safe, efficient, and economical operation. We have held, in Awards too numerous to cite, that we would not substitute our judgment for the findings of the appropriate carrier officer, due process being satisfied, unless there is a clear showing that the action taken was an arbitrary, capricious, unreasonable, or excessive exercise of discretion.

The record herein discloses that Carrier satisfied the evidentiary requirements of the above quoted rule of law. With rare exception, all Divisions of this Board have sustained the dismissal of employees who have shown the lack of judgment of appearing for work in a condition which could endanger his own safety, that of fellow workers, and potential passengers, in addition to the property of the employer and that of its customers. (See Award 5522) Claimant's conduct on April 19, 1970 was of such nature. Consistent with the above reviewed concepts, we have ruled that appeals for consideration of a Claimant's length of service be dealt with on the property. In the very few instances where such applications were given favorable treatment, the facts adduced from the record were clearly distinguishable from those before us herein.

A W A R D

Claim Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February, 1973.