

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute:

(System Federation No. 114, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)

(Southern Pacific Transportation Company
(Pacific Lines)

Dispute: Claim of Employees:

1. That under the current agreement Car Inspector P. A. Comorre 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 17, 1972 after twenty-six (26) 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 December 24, 1971 when he was removed from service pending hearing and subsequently dismissed on January 17, 1972.
 - (b) Grant to the Claimant all vacation rights.
 - (c) Assume and pay all premiums for Hospital, surgical and medical benefits, including all cost for life insurance.
 - (d) Pay into the Railroad Retirement fund the maximum amount that is required to be paid an active employee for all time he is held out of service.

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 Local Chairman, was dismissed from service after investigation and hearing relative to a charge of violation of Rule "G". At the time of his dismissal, Claimant had been in Carrier's service for some 26 years. During this period Claimant had been previously disciplined for minor infractions resulting in 90 demerits.

Claimant was charged with

"*** allegedly being under the influence of intoxicants while on duty at Los Angeles, December 24, 1971, for which occurrence you are charged with responsibility, which may involve violation of Rule G of the General Rules and Regulations."

The Organization contends that Carrier has failed to prove that (1) Claimant was on duty, and (2) that he was under the influence of intoxicants.

The hearing transcript of some 314 pages substantially supports the charges made by Carrier. Numerous Carrier officials who were in contact with Claimant on the claim date testified that Claimant was intoxicated. Claimant was described as "not normal," "odor of intoxicants on his person," "eyes appeared to be blood-shot, glassy, and he appeared to have difficulty in focusing his eyes," "speech was thick and slurred and walk was unsteady," and that his clothing was "disheveled".

Claimant presented fellow employes who testified that in their opinion Claimant was normal in every respect, and that there was "nothing unusual nor any actions that were not proper".

The Board is satisfied that there was substantial evidence in the record both as to Claimant's being on duty and his state of intoxication to support Carrier's charge.

Despite the fact that the occurrence took place on Christmas Eve day, Claimant's misconduct constituted just and reasonable grounds to discipline Claimant. However, the Board is persuaded that in view of Claimant's virtually unstained employment record of 26 years, dismissal from service was excessive. Carrier, therefore, is ordered to reinstate Claimant to service with full seniority rights. But Claimant shall not be entitled to be compensated for time lost or vacation pay, nor shall he be entitled to insurance premiums or payment into the Railroad Retirement fund.