

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 41, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

Dispute: Claim of Employees:

Under the current agreement that Station Lineman B. S. Herndon should be restored to his former position with his seniority rights unimpaired and reimbursed for wages lost. Made whole for all vacation rights, made whole for all health and welfare and insurance benefits, made whole for pension benefits including Railroad Retirement and Unemployment Insurance, also restore all other benefits he would have had if he had remained in 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 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 was dismissed from Carrier's service following a hearing at which he was adjudged at fault in being absent from his regularly assigned position without permission on June 28, 1972, and in being present on company property during his assigned working hours while under the influence of intoxicants.

We hereby conclude from the record at hand that the charges brought against claimant have been proven by substantive evidence. Special Officer Smoker testified that at approximately 11:15 AM on the claim date he entered claimant's camp car and observed claimant in his bed. Smoker observed claimant at that time and he

felt that claimant was under the influence of alcohol. He returned to claimant's camp car at approximately 3:00 PM with Assistant Trainmaster Whalin at which time they found claimant in bed again. Both Whalin and Smoker testified that claimant appeared to be under the influence of alcohol at this time. They also found 3 bottles of rum in the vicinity of claimant's bed - one was empty and the other two were half empty. Claimant admits to being in bed on these two aforementioned occasions due to severe neck trouble that he had been plagued with for the previous several months. However, he denied having taken any alcohol.

While the evidence adduced at the hearing relative to claimant's sobriety on the date of claim was conflicting, we nevertheless conclude that Carrier has proven the charges against claimant by substantive evidence. Whalin and Smoker both testified that claimant appeared to be under the influence of alcohol. Whalin offered to give claimant a blood test but he refused to avail himself of this opportunity to establish his sobriety.

While we believe from the record that Carrier has sustained the burden imposed upon it relative to the charge that claimant was under the influence of intoxicants on the claim date, we nevertheless conclude that the discipline imposed was excessive in light of claimant's 22 years service with Carrier. This referee is certainly cognizant of the serious nature of the charge at hand. Yet the fact claimant has 22 years service with the Carrier and has only two blemishes on his service record (both for causing an accident) coupled with the fact he appears to be a competent and efficient station lineman militates against his dismissal. There is no evidence that claimant has a chronic problem with alcohol and we can only infer that the case at hand was merely an isolated instance.

Consequently, we feel claimant should be reinstated to his former position with the Carrier with his seniority and vacation rights restored but without compensation for time held out of service, and without being made whole for health and welfare and insurance benefits, and pension benefits.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 5th day of December, 1974.