

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 6955  
Docket No. 6763  
2-BN-CM-'75

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

Parties to Dispute: ( System Federation No. 7 Railway Employees'  
( Department A.F.L. - C.I.O. - Carmen  
(  
( Burlington Northern Inc.

Dispute: Claim of Employees:

1. That under the current Agreement, Mr. D. Bazant and Mr. J. Gregor, Carmen, were arbitrarily, capriciously, and unjustly held out of service on May 11, 1973 and arbitrarily, capriciously and unjustly dismissed June 27, 1973, from the service of the Burlington Northern, Incorporated at Receiving Yard, Cicero, Illinois.
2. That accordingly, the Burlington Northern, Incorporated be ordered to compensate the aforementioned Carmen eight (8) hours pay for each work day, at the straight time rate, commencing May 11, 1973 and continuing until each is reinstated to Carrier's service, that seniority, job protection benefits, vacation and pass rights be restored as though neither claimant had been dismissed and that the Carrier pay the premium for hospital, surgical, medical and life insurance benefits for all time withheld from service, and all other benefits accruing employees in active 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.

The two Claimants herein were dismissed from Carrier's service following an investigation conducted on June 6, 1973, by letter dated June 27, 1973 which stated in pertinent part:

"As a result of investigation accorded you on June 6, 1973, this is to advise you that effective this date you are hereby dismissed from the service of the Burlington Northern Inc. for violation of Rules G, 700, 702, and 702 (b) of the Burlington Northern Safety Rules, by using and being under the influence of alcoholic beverages or narcotics while on duty and on company property at 2:40 A.M., May 11, 1973, insubordinate conduct and failure to comply with the instructions of the proper authority in the performance of your duties, and being absent from your assigned duties without proper authority, when located in the employees' parking lot in a physical condition incapable of performing your duties, while assigned as Car Inspector, 11:00 P.M. to 7:00 A.M., Cicero, Illinois..."

Petitioner's position essentially is based on the argument that Carrier failed to supply adequate proof at the investigation in substantiation of the charges against Claimants. In addition to the denials in Claimants' testimony, Petitioner points out that no proof by laboratory tests indicated that either Claimant was under the influence of any narcotic or alcohol and no bottle or anything else incriminating was found in their car by the police. Further, the Organization presented medical evidence that neither of Claimants was an alcoholic or a narcotics addict.

Carrier, in its rebuttal statement and earlier, made the valid point that the medical evidence submitted by Claimants at the investigation was the result of tests taken approximately two weeks after the incident and do not shed any light on their condition on the night in question.

The transcript of the investigation reveals substantial evidence in support of the conclusion reached by Carrier. Even though this evidence is controverted in part by Claimants' testimony, it is sufficient to justify the conclusion of guilt. We have said on many occasions that it is not our function to resolve conflicts in testimony and we will not disturb discipline case findings that are supported by credible though controverted evidence (see Awards 4981 and 6408 for example).

With respect to Petitioner's contention that no laboratory verification of Claimants' condition was sought by Carrier, we do not agree. The effect of the use of either intoxicants or narcotics is well known and expert verification is not required. In the instant case there is substantial and preponderant evidence that both Claimants were either under the influence of narcotics or alcohol and were unable to perform the duties assigned to

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them (Award 6012). Our conclusion then is that Claimants were afforded a fair and impartial hearing, and the findings of guilt were supported by substantial evidence. Furthermore, the discipline imposed was reasonable under the circumstances.

A W A R D

Claim denied.

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 15th day of October, 1975.