

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. The Burlington Northern, Inc. unjustly, improperly and without a fair and impartial investigation suspended Mr. T. C. Ricci from service 15 days commencing October 1, 1975, thru October 15, 1975.
2. That accordingly, the Burlington Northern Inc. be ordered to make Mr. T. C. Ricci whole, compensating him for all time lost at the straight time Hostler's rate including fringe benefits, and in addition any reference to this incident be stricken from his personal record.

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 employees 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 suspended from service on October 1, 1975, prior to a formal investigative hearing; after such hearing on October 9, 1975, the suspension was directed by the Carrier to be of 15 days' duration. Disciplinary action by the Carrier was based on "violation of Rule 'G' of the Safety Rules of Form 15001, October 1, 1975, as disclosed by investigation accorded you October 9, 1975."

Carrier's Rule "G" reads in pertinent part:

"The use of alcoholic beverages or narcotics by employes subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on company property is prohibited. The use of possession of alcoholic beverages or narcotics while on duty or on company property is prohibited."

The Board finds no substantive defects in the procedure followed by the Carrier in making the charge against the Claimant or in its content of the October 9, 1975, hearing. The Organization claims that sufficient written notice of the charge to the "appropriate local organization representatives" was not given. However, Carrier's notice to the Claimant included reference to copy for the appropriate representative. The Organization argument that the charge presumed guilt of the Claimant is not well founded, as it was made clear that the scheduled investigation was for the purpose of "determining ... responsibility". Finally, the hearing itself provided full opportunity for the defense of the Claimant by himself and his representative.

The record shows that Carrier administered discipline based upon an allegation that the Claimant had consumed a glass of beer some three hours or more prior to reporting for duty as scheduled. That allegation was based, first, on the obviously self-serving statement of another employe, who himself was under investigation for his actions prior to reporting on duty; and second, on what can only be found to be an intense "grilling" of the Claimant in which he was reported to have stated that he had a glass of beer at least three hours prior to reporting for duty.

The Carrier had no independent observation of the Claimant prior to duty. The Claimant has no disciplinary history. No direct appearance that he had been drinking was claimed when he did report for work. His so-called "admission" was made in the presence of three Carrier representatives but with no representative of his own. And the employe who had been the source of the original information failed to repeat it at the formal investigation.

Burden of proof in disciplinary matters rests with the Carrier. In the present instance, such proof was notably lacking.

The Board will sustain the claim to the extent indicated in Rule 28 (g), which carries no reference to compensation for "fringe benefits".

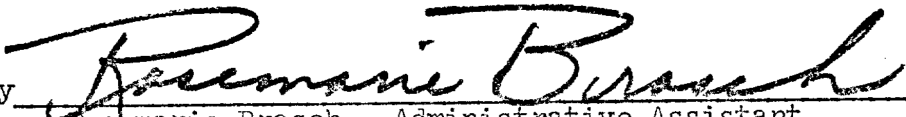
A W A R D

Claim sustained to extent indicated in Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of April, 1978.