

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

Parties to Dispute: { System Federation No. 2, Railway Employees'
Department, A. F. of L. - C. I. O.
(Gannan)
{
{ Alton and Southern Railway Company

Dispute: Claim of Employee:

1. That Gannan W. Thibault was unjustly treated by the Alton and Southern Railway Company when said Railroad discharged him on April 13, 1946, prior to the formal investigation held April 21, 1946.
2. That, accordingly, the Alton and Southern Railway Company be ordered to reinstate this employee with seniority rights unimpaired and compensate him as Gannan's pro-rata rate for all time lost, plus, six per cent (6%) interest for all wages deprived of. Also, fringe benefits (vacations, holidays, premiums for hospital, surgical, dental and group life insurance) deprived of from April 13, 1946 until returned to 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 amended June 21, 1937.

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 had been employed by Carrier for eight years. Claimant was charged with being absent from his equipment from February 17, 1946 through April 21, 1946 without permission and, after an investigation, was dismissed from service.

Petitioner raised several procedural objections, principally that the charge had not been proven and further that Carrier could not verify Claimant's presence beyond the hearing. First, based on well established procedure in cases of carrier charges, we find that the charge against Claimant was proven. Further, we find that carrier had

the right to place Claimant's prior record in evidence for the purpose of considering the grounds of discipline to be assessed; such evidence may be considered only if the instant charges are proved against Claimant. After the Organization objected to the introduction of the previous record, the hearing Officer agreed not to review the record during the hearing. It should be made clear to the parties that this Board has held that it is not necessary to review an employee's previous record during a hearing; however there is no violation of the agreement, or prejudice to Claimant's rights, if the record is introduced for the limited purposes described above. In sum, we find that this case is free of prejudicial error.

With respect to the merits, we find that the evidence of his having been more than substantial to establish Claimant's absence from work for the period in question, as charged, is sufficient to provide any evidence which hearing which would vindicate his offense. Our awards have consistently held that it is the employer's responsibility and burden to establish with such evidence of its crime, during the hearing.

With respect to the nature of discipline imposed, it was to Carrier's objection during the handling of this dispute on the grounds that Claimant suffered from alcoholism and that this was the present reason for his protracted absence. The record also indicates that shortly before Claimant returned to service he had been in an alcoholism Anonymous program and continued to participate in that program. In addition, Carrier indicated that the services of its so-called Counseling program, designed to aid employees suffering from alcoholism, were offered to Claimant. We find also that Carrier's stated goal of helping people is totally independent of their alcoholism; we assume that the wishes of employer under those parameters. Furthermore, it is well known that individuals suffering from alcoholism need to be motivated to help themselves in order to change their behavior. In this case Claimant and we assume that he had a problem one in taking steps to correct it. For that reason we find that the discipline assessed can best be served by payment, so as to maintain the discipline to ensure that Claimant be reinstated to service with satisfactory work record but without pay for the last. In doing so Claimant must be made aware that he has a contractual obligation to Carrier to perform service on all his assigned days and hours and if his behavior reveals to the previous public of alcoholism, which led to this discharge, Carrier will be taking responsibility in permanently terminating his employment. We strongly suggest that Claimant continue with his rehabilitation program to avoid serious repercussions including the loss of his job.

A M A R D

Claim sustained to the extent indicated in the findings above.

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Form No. 7615
Police No. 7570
2-27-73

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Board Division

Address: Executive Director
National Railroad Adjustment Board

By _____
Attorney for Respondent - New National Adjustment Board

Noted at Chicago, Illinois, this 14th day of July, 1978.