

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: ( System Federation No. 91, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Firemen & Oilers)  
(  
( Louisville and Nashville Railroad Company

Dispute: Claim of Employee:

1. That under the Current and Controlling Agreement Service Attendant O. W. Cross was unjustly dismissed from the service of the Louisville & Nashville Railroad Company on June 15, 1976, after a formal investigation was held in the office of Mr. W. L. Ellison, Master Mechanic, on Monday, May 24, 1976.
2. That accordingly, Service Attendant O. W. Cross be restored to his assignment at South Louisville Shops with all seniority rights unimpaired, vacation, health and welfare, hospital and life insurance be paid and compensated for all time lost at the pro-rata rate of pay, effective June 15, 1976.

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 was charged with having in his position, an alcoholic beverage, while on duty on May 11, 1976.

An investigative hearing was held on May 28, 1976 pursuant to Agreement Rule 32 to determine the merits of this allegation.

Based on this inquiry, Carrier dismissed claimant from service.

Accordingly, we have carefully assessed the extensive documentary record to ascertain the full dimension of this dispute and have found significant inconsistencies contained therein.

We will not elucidate these testimonial contradictions, except to conclude that the record in its most critical essentials supports the asserted charges.

While we recognize this misbehavior to be antithetical to our high decorum standards, we also recognize the importance of fashioning a remedy that is consistent with progressive disciplinary principles.

Claimant was not found to be under the influence of alcohol.

He did not, at that moment, present a clear and imminent danger to carrier operations. He was an employee with over thirty (30) years good standing.

We agree that this serious charge warrants some measure of discipline, but not permanent dismissal. It's too severe a penalty.

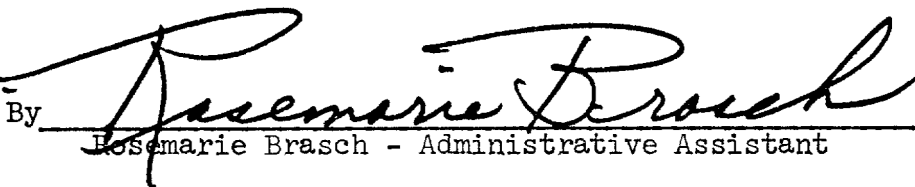
We will reinstate him to his position, but without back pay. His suffering thus far is sufficient punishment for this offense.

A W A R D

Claim sustained to the extent expressed in this finding.

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 1st day of November, 1978.