

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

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
(  
( Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That Machinist D. E. Sago was improperly removed from the service of the Carrier on December 18, 1976, and subsequently dismissed from the service of the Carrier on January 14, 1977.
2. That, accordingly, Carrier be ordered to restore Machinist D. E. Sago to service with all rights unimpaired and with pay for lost wages in accordance with Rule J-(a) of the Controlling Agreement.

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 hired by the Carrier on September 7, 1976. Following a fair and impartial investigative hearing, Claimant was dismissed from service on January 14, 1977, for violation of Safety Rules 3002 and 3002 (c) and General Rule "G", resulting in "damage to company vehicle" and "delay to train KB-4" on December 18, 1976. There is no dispute that the Claimant and a fellow employee were involved in a situation whereby a personal vehicle and a Carrier vehicle, driven by the two employees, became entangled on one of the Carrier's tracks upon their return to work while on a meal period.

A Carrier official and two Carrier policemen each testified that the Claimant appeared, from a sense of smell, to have consumed alcoholic beverages and that the Claimant had stated to them individually at the time that he had consumed "a couple of beers". During the investigation, the Claimant denied that he had consumed beer while on duty or during the lunch period, and also denied so advising the Carrier officials.

The Board finds, upon review of the record, no basis for questioning the truth of the Carrier officials' testimony, the Claimant's self-serving testimony to the contrary notwithstanding. The applicable rules provide as follows:

Rule 3002: "Narcotic medication and/or alcoholic beverage shall not be used while on duty or within 8 hours before reporting for duty."

Rule 3002(c): Assure self before reporting for duty that you are not experiencing drowsiness, mental confusion, dizziness or other adverse effects that are likely to interfere with performing duties safely. If any such symptoms are experienced while on duty, immediately inform immediate supervisor."

Rule "G": "The use of alcoholic beverages, intoxicants or narcotics by employes subject to duty is prohibited. Being under the influence of alcoholic beverages, intoxicants or narcotics while on duty, or their use or possession while on duty is prohibited."

Based on the clear language of the rules and the testimony concerning the Claimant's actions and condition, the Carrier's disciplinary penalty must be supported.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of January, 1979.