

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: { System Federation No. 4, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Blacksmiths)
 { Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

- (1) That the Carrier violated Rules 35, 36 and 37 of the current agreement when on July 12, 1976, Blacksmith Helper Phillip H. Miranda was dismissed from the service of the carrier.
- (2) That accordingly, the carrier be ordered to restore Blacksmith Helper Phillip H. Miranda to service with seniority rights unimpaired, compensate him for all time lost retroactive to June 22, 1976, make claimant whole for all vacation rights, pay the premium for hospital, surgical and medical benefits for all time held out of service, pay the premium for group life insurance for all time held out of 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 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 dismissed from service on the grounds that (1) he was found in possession and consumption of alcohol while on duty; and (2) he falsified his daily service (time) card on the same day.

The record indicates that about one-half hour before the end of his shift, Claimant was observed by a Carrier Patrolman drinking beer in an auto parked in a parking lot on Carrier's property. Two other employees were seated in the car in which Claimant was observed drinking beer. The Patrolmen found a six pack container of beer -- with one empty bottle, two partially full and 3 full bottles.

The practice, confirmed in the record, was that employees who finished their assigned day's work could go to the locker room until their shift ended. The Gang Foreman testified at the hearing that Claimant had performed his full day's work and that if employees "need to go to the parking lot to get a pack of cigarettes, they have been permitted to do that or go to the commissary and get a pack if they run out, ..." Claimant, however, did not request permission to go to the parking lot on the day in question.

With respect to the charge that Claimant falsified his time card, Claimant testified that he asked if he could turn in his time card but was told that it would be taken care of. At the hearing, the General Foreman stated as the basis for the charge of falsification of daily service card that Claimant was "in the parking lot before quitting time without securing permission" and that time cards are confiscated, as a matter of standard procedure, when an employee is charged with violation of a rule and is being removed from service.

Claimant's foreman testified that Claimant had completed his day's assignments, and that, under established custom and practice, he could have retired to the locker room until his shift ended, about one-half hour later. On the other hand, Claimant did not have permission to go to the parking lot.

The patrolman testified that he found a partially full bottle of beer between Claimant's feet, (Claimant was sitting in the driver's seat) and another partially full bottle in "a container opposite the driver's side," where another employee was sitting. Insofar as can be determined from the record, no disciplinary action was taken against the other two employees who were in the auto with Claimant at the time.

Drinking on company property, of course, cannot be condoned and warrants disciplinary action. In the case before us, however, only Claimant was charged, although two others were in the car at the time. Fair treatment requires that discipline be even-handed and administered evenly and impartially.

Claimant also asked for his time card, but was told that it would be taken care of.

The Board is of the opinion that taking all the above into consideration, the purpose of discipline has been accomplished and would direct the Carrier to reinstate Claimant, but without back pay. Claimant is advised that he has been warned that repetition of such conduct, or other improper conduct will bear on the penalty to be imposed in the event of a recurrence of unsatisfactory conduct.

A W A R D

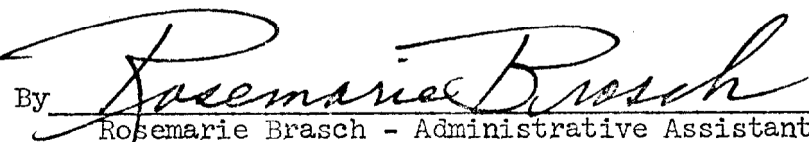
Reinstatement without back pay.

Form 1
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Award No. 7950
Docket No. 7546
2-C&O-BK-'79

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 13th day of June, 1979.