

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. 2, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 32 of the controlling Agreement, January 24, 1977, when they unjustly capriciously, and arbitrarily dismissed Carmen D. B. Watt for allegedly violating Conditions of Employment, Item 4.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman D. B. Watt for all wage loss from January 24, 1977 until he is returned to service with seniority and vacation rights unimpaired. Also, that he be made whole for all loss of health and welfare and pension rights.

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 dismissed from service on January 27, 1977, "account your violation of Conditions of Employment, Item 4, of your Application for Employment, dated August 25, 1949, when you were found under the influence of intoxicants while on duty as Carman at El Dorado, Arkansas at about 9:20 P.M. January 14, 1977".

Although the Organization raised objection to the conduct of the investigative hearing which preceded the Claimant's dismissal, the Board finds that the hearing was conducted in a fair manner.

Item 4 of the Conditions of Employment read in part that the signer promises to:

" . . . observe all rules and regulations governing the service to which I shall at any time be assigned and to . . . obtain from the use of intoxicant liquors and perform all duties assigned to me to the best of my ability. . . ."

One of the rules referred to is Rule G, which reads as follows:

"The use of intoxicants or narcotics is prohibited. Possession of intoxicants or narcotics while on duty is prohibited."

The Claimant's supervisor and an agent of the Carrier observed the Claimant during his duty hours on January 14, 1977. They concluded that the Claimant was under the influence of intoxicants, although they did not observe him consuming an intoxicant nor did they find evidence that he had intoxicants in his possession. The Claimant admitted during the investigative hearing that he had consumed "a couple of beers" shortly before reporting for duty.

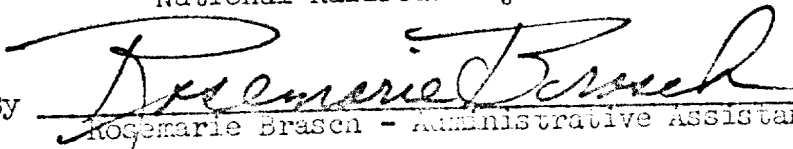
The Claimant has been employed by the Carrier for 26 years and has no record of previous disciplinary infractions. Under the circumstances, the Board finds the penalty of dismissal unduly harsh. Nevertheless, in ordering his reinstatement, it is to be clearly understood that the intervening period is to be carried on his record as an extended disciplinary penalty, against which his future conduct may be judged.

A W A R D

Claim sustained to the extent that Claimant shall be offered prompt reinstatement with full seniority, but without back pay or other retroactive benefits.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasen - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of September, 1979.