

The Second Division consisted of the regular members and in addition Referee Robert E. Fitzgerald, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 162, Railway Employees'
(Department, A.F. of L. - C. I. O.
((Carmen)
(
(Southern Pacific Transportation Company
((Texas and Louisiana Lines)

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated the controlling agreement, particularly Rules 34 and 28, when they unjustly dismissed Carman C. Bell, Jr. from their service effective October 13, 1977.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to reinstate Carman Bell to service and compensate him as follows:
 - a) Seniority rights unimpaired;
 - b) Compensate him for all time lost since October 13, 1977;
 - c) Make him whole for all vacation rights;
 - d) Make him whole for health and welfare and insurance benefits;
 - e) Pension benefits including Railroad Retirement and Unemployment Insurance;
 - f) Make him whole for any other benefits he would have earned during the time he was 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 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 employed by the carrier for approximately four months, when he was found unconscious at his work location on September 30, 1977. Various employees of the company, including management representatives, assisted the claimant on that day. The local paramedic crew from the fire department was also used to assist claimant.

Numerous witness testified that claimant admitted to having taken a narcotic medication that day, prior to his losing consciousness. Further, a witness quoted the paramedic team as having analyzed his condition as being one of an overdose of a narcotic substance.

Claimant testified that he had no recollection of many events of that day, including conversations with numerous company employees and management representatives. His recollection resumed from the point where he was being taken home by a fellow employee.

It is the position of the claimant that the carrier has introduced insufficient evidence to justify his termination. Further, the claimant has raised the question of his receiving due process at his hearing because the same carrier representative who issued the notice of hearing, served as hearing officer, advised him of the carrier decision to terminate him, and denied the initial appeal.

The carrier denies that any due process violation occurred because the representative who fulfilled the various functions was not a witness against the claimant. Further, the carrier contends there is sufficient evidence to justify the discharge of the employee for a violation of Rule G of its rules and regulations.

The language of Rule G is as follows:

"G. The use of alcoholic beverages, intoxicants or narcotics by employees subject to duty, or their possession, use or being under the influence thereof while on duty or on Company property, is prohibited.

"Employees shall not report for duty under the influence of, or use while on duty or on Company property, any drug, medication or on Company property, any drug, medication or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety."

The procedural question of a denial of due process based on multiplicity of roles by management representative, has been considered in many previous cases. It has been repeatedly held that the practice of combining functions at the initial hearing is one that should not be encouraged. However, it has been repeatedly held that the combination of duties, particularly when they are ministerial in nature, does not amount to a violation of the due process rights of the employee.

In the instant case, it is clear from the record, that the combination of duties did not amount to a denial of due process of the claimant. The record reflects a full and complete hearing into the conduct of the claimant, and a review of the disciplinary decision by higher representatives of the carrier's management personnel.

On the merits of the finding, the record reflects more than sufficient evidence to sustain a finding of a violation of Rule G. Both the testimony of numerous witnesses, and the admissions of the claimant show that he was unconscious due to excessive medication. Further, there is no evidence in the record to reflect that the unconscious condition resulted from other than an overdose of the narcotic medication. Finally, the severity of the discipline issued is proper under the circumstances of the case. The seriousness of the conduct of the claimant, plus the short term of employment prior to that event, justify the termination of the claimant by the carrier.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of November, 1979.