

The Second Division consisted of the regular members and in addition Referee Richard R. Kasher when award was rendered.

Parties to Dispute: { System Federation No. 7, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Soo Line Railroad Company

Dispute: Claim of Employees:

Carman Ronald E. Wischow, was removed from service on Dec. 21, 1977 by Shops Manager Soo Line R.R. N. Fond du Lac, Wis. in regard to investigation in violation of Rule (E) and (G) of General Safety Rules, that under the current agreement the Carrier violated Rule 32, Par. 2 and understanding of Soo Line R.R. employees' Alcoholism and Drug Program, 9-25-74.

Mr. Wischow, claims that being removed from service more than sixty (60) days is too severe a penalty for the violations of Rule (E) and (G) and is now claiming to be reinstated back to work with loss of wages following 60 days after dismissal and until returned to service with seniority and all benefits due to him, as if he was working.

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, a carman employed at the Carrier's North Fond du Lac Shop, in Wisconsin, was dismissed from service as the result of an incident which took place on November 19, 1977. On that date the Claimant, who was on one of his designated rest days, was called to service because of a derailment. The credible evidence of record establishes that the Claimant consumed alcoholic beverages in a road truck while in the Carrier's service. Further evidence establishes that the Claimant was or became intoxicated during the relevant time frame and that his state of intoxication resulted in a physical altercation with another employee.

As a result of this incident the Claimant was charged with violation of Rules (E) and (G). These safety rules provide that civil and gentlemanly deportment is required of all employees when dealing with the public, their subordinates and each other; and, that the use of intoxicants or narcotics is prohibited. A trial was held and the Claimant was found guilty under the above charges and was dismissed from service.

Simply stated, it is the Carrier's position that the evidence clearly establishes the Claimant's guilt and that the discipline imposed was appropriate.

It is the position of the Organization that the Carrier violated discipline Rule 32, paragraph 2, which provides that if an employee has been unjustly suspended or dismissed from service, such employee shall be reinstated with seniority rights unimpaired and compensation will be allowed on the basis of regular assigned hours at the pro rata rate for time lost less any amount which the employee may have earned at other employment during such dismissal or suspension. It is the further position of the Organization that the parties have an agreement regarding Alcoholic and Drug Control which provides in paragraph 3 that the purpose of this policy is to assure employees that if alcoholism or drug abuse is a problem they will receive careful consideration and an offer to assist in the resolution of such problem. Further, paragraph 6 of the Alcoholic and Drug Control program provides that in instances where it is necessary, sick leave or leave of absence may be granted for diagnosis, treatment or rehabilitation on the same basis that such aid is granted for other health problems.

It is the Organization's position that in the instant case, the Claimant should have been offered such assistance under the applicable paragraphs of the alcoholic program. But more importantly the Organization argues, the Claimant should have been given special consideration in this case since he had no knowledge that he was going to be called to work on the day in question because of the derailment. It is the Organization's position that the record indicates that the Claimant's drinking may have occurred prior to his being called for emergency service. Finally, the Organization contends that the Claimant, in realization of his possible problem drinking, joined Alcoholics Anonymous and sought self help under the Alcoholic and Drug Control Agreement by entering a local hospital for a 30 day treatment program.

This Board finds that the record clearly substantiates that the Claimant was under the influence of and did use intoxicants on the evening of November 19, 1977. On that foundation, the Carrier's action in this case cannot be faulted.

However, the parties have established an "Employee Alcohol and Drug Program" recognizing the adverse effects of chemical dependency problems experienced by employees. The parties have endeavored to combat such results through the implementation of this policy. The record before us does indicate an attempt by the Claimant to correct his problem. Furthermore, Claimant with 11 years of service does not have a record of prior disciplinary infractions.

Therefore, we find that permanent dismissal was excessive. Claimant should be restored to service with seniority and other rights unimpaired but without compensation for time lost on the condition that Claimant pass the usual return to duty physical and that Claimant enter and/or continue to secure adequate medical and rehabilitative counseling under the Carrier's Alcohol and Drug policy. It will be the Claimant's continuing responsibility to follow all such counseling and failure to do so may result in further disciplinary sanctions.

A W A R D

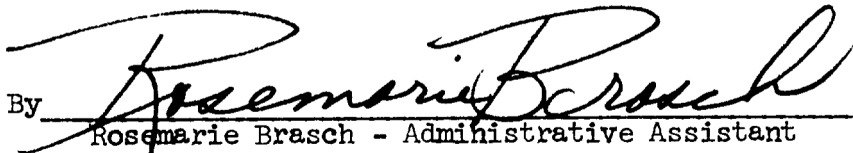
Claim disposed of consistent with the above findings regarding mitigation of the discipline.

Form 1
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Award No. 8290
Docket No. 8130
2-SOO-CM-'80

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 26th day of March, 1980.