

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. 76, Railway Employees'  
                          { Department, A. F. of L. - C. I. O.  
                          { (Carmen)  
                          { Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Air Brake Repairer Felix Rogers was unjustly dismissed from service on December 28, 1977, and was withheld from service and denied compensation from date of December 16, 1977.
2. Air Brake Repairer Felix Rogers was erroneously charged with being under the influence of intoxicants on December 16, 1977.
3. That the Chicago and North Western Transportation Company be ordered to reinstate Air Brake Repairer Felix Rogers with his seniority unimpaired; compensate him for all time lost dating from December 16, 1977; and make him whole for any loss of benefits suffered due to discipline rendered by the Carrier.

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, an air brake repairman at the Carrier's California Avenue Shops, was charged, as the result of an incident on December 16, 1977, with responsibility for failing to properly perform his assignment and violation of Rule G by being under the influence of intoxicants.

On the date in question, the Claimant was confronted, at approximately 1 P.M., by several Carrier officials while he was in the men's restroom. There is some question in the record regarding how the Carrier received the advice regarding the Claimant's alleged state of intoxication while in the restroom at the specified hour. In any event, a confrontation took place between the Claimant and the Carrier's officials which resulted in the Claimant's leaving the Carrier's property on the same date. The Claimant was charged with violation of Rule G; an investigation was held; and the Claimant was dismissed from service.

It is the position of the Carrier that the credible evidence of record demonstrates that the Claimant was under the influence of intoxicants on the day in question. The Carrier alleges that the record supports findings that the Claimant, when confronted by the Carrier's officials, was loud and abusive, and that upon being requested to take certain tests regarding his alleged state of intoxication he refused. The Carrier points to evidence in the record regarding several of its officials detecting the smell of intoxicants on the Claimant's breath when he was found in the men's restroom. The Carrier argues that the evidence clearly supports its determination that the Claimant violated Rule G and the Carrier contends that this Rule is one of the most fundamental safety rules and its violation in the past has caused many accidents in the industry. Therefore, the Carrier concludes that the dismissal of the Claimant was warranted and that the Claimant's request for reinstatement and back pay should be denied.

It is the position of the Organization that the charges placed against the Claimant were false and that the Carrier failed to prove the charge of intoxication. The Organization contends that Carrier witnesses were inconsistent regarding the aroma they allegedly smelled on the Claimant's breath. The Organization argues that only the flavoring of an alcoholic beverage can be smelled and not the alcohol itself. They alleged inconsistency in the testimony of the Carrier witnesses concerns one witness not having smelled any alcohol, two witnesses having smelled a slight odor of alcohol, and one witness who testified that he smelled a strong odor of alcohol.

The Organization contends that the evidence submitted by the Carrier regarding the Claimant's unsteady condition was rebutted by the fact that the Claimant was able to navigate a set of stairs and was able to arrange, when he left the property, for his transportation home. The Organization justifies the Claimant's argumentative behavior on the basis of his having been excited as a result of the confrontation with four Carrier officers and being placed in the position where he believed his job was in jeopardy. This set of circumstances, the Organization argues, justifies the argumentative nature of the Claimant's behavior.

Finally, it is the Organization's position that the hearing was conducted improperly. First, the Organization argues that the reading of Rule 14 into the record was improper. And secondly, the Organization contends that the Claimant's representative was not permitted to develop a line of questioning concerning who called the Carrier's attention to the fact that there were men in the washroom who were allegedly drinking.

This Board finds the procedural objections of the Organization to be without merit. Rule 14 which was read into the record concerns an employee's obligation to report for duty at the designated time and place and to be alert, attentive and devoted to the company's service. Although, this rule was read into the record, the Claimant was put on notice regarding the charged violation of Rule G, concerning his alleged abuse and/or influence by intoxicants, and, the mere reading of another rule into the record did not prejudice the findings regarding his alleged violation of Rule G. The second procedural objection by the Organization concerns the so-called "mystery caller". Although the Organization places some reliance on the fact that the Carrier was unable or refused to identify who reported the Claimant's alleged improper behavior, we find the identity of the caller, if in fact there was a caller, to be irrelevant to the Carrier's determination of guilt.

Turning to the merits, the totality of credible evidence supports the Carrier's findings that on the day in question the Claimant was in fact under the influence of intoxicants. Rule G provides:

"Use of alcoholic beverages or narcotics by employees subject to duty are prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on company property is prohibited."

Several witnesses provided supporting and consistent testimony regarding the Claimant's behavior and attitude on the day in question. It has been well-established that laymen are able to make reasonable observations regarding an individual's apparent state of sobriety. The record does not contain any evidence supporting the Claimant's allegations that the Carrier officials harrassed the Claimant or "were out to get him".

The Claimant's prior record indicates that at the time of the incident he had been in the Carrier's employ in excess of six years and that he had been subject to previous discipline, of a less serious nature, on a few occasions. We are particularly concerned in this case by the Claimant's state of intoxication and his attitude when confronted by Carrier officials. We are also mindful of the fact that rail management and the Organizations representing its employees have been leaders in the field of alcoholic rehabilitation. Although, there is no indication in this record that the Claimant has a drinking "problem", nevertheless we are moved to direct that the Carrier reinstate the Claimant, with no back pay, and that some attempt be made to determine whether this employee is in need of alcoholic rehabilitation or whether he needs to more fully recognize and appreciate his responsibilities to the Carrier, himself, and his fellow employees.


A W A R D

Claim disposed of consistent with the above findings.

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.