

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 8309  
Docket No. 8107  
2-SLSF-CM-'80

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

Parties to Dispute: { System Federation No. 22, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Carmen)  
{ St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

That the St. Louis-San Francisco Railway Company unjustly suspended Carman Apprentice Paul J. Tounzell, Kansas City, Missouri, from service on November 10, 1977, and subsequently dismissed him following an investigation conducted on December 28, 1977, in violation of the controlling agreement.

That the St. Louis-San Francisco Railway Company failed to hold the investigation at a reasonable time and date.

That Carman Apprentice Paul J. Tounzell be restored to service with all seniority rights, vacation rights and benefits that are a condition of employment. That he be compensated for all time lost plus six percent (6%) interest.

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, Paul J. Tounzell, was notified by letter dated November 14, 1977, to appear for a formal investigation on November 18, 1977. He was charged with violation of certain regulations of Rules and Regulations, Safety Rules and Instructions Governing Mechanical Employees. The Organization requested a postponement until Friday, November 25. The carrier responded by granting the requested postponement but stated that a new date would be established in the future and, in the meantime, Claimant would be held out of service pending investigation. That investigation was held December 28. Following an appropriately conducted hearing the penalty herein complained of was assessed.

At the outset the Organization takes the position that Rule 35(a) of the Agreement was violated in that the investigation was not held promptly. The

record indicates that the Organization first requested postponement. The claimant's doctor indicated he was under medication and could not work until December 5, 1977. He was to appear in Court on December 22 regarding charges stemming from the incident under investigation. In view of the foregoing this Board concludes that the withholding from service was of a protective nature rather than punitive and the Rule was not violated.

Mr. Tounzell was charged with violation of General Regulations, pertinent parts of which, read:

B -- "Employees who are negligent or indifferent to duty or who conduct themselves ... in such a way that the railway will be subject to criticism and loss of good will, will not be retained in service."

C -- "Employees must be alert ..., give their undivided attention to their duties during prescribed hours."

Rule G -- "The use or possession of intoxicants or narcotics is prohibited."

Rule P -- "Employees must not absent themselves from their duties, exchange duties with nor substitute others in their place, without proper authority."

On the date in question claimant was scheduled to work from 7:00 A.M. to 3:00 P.M. He testified as follows:

"At 11:30 A.M. I went to lunch. I returned approximately 11:45 A.M. from lunch. I had taken a dose of cold medicine which made me drowsy. I then proceeded to strike two cars or three, I don't remember exactly and also hurting my arm. I left the scene and returned home."

His doctor submitted a statement to the effect that on the date in question through December 5, Mr. Tounzell had been taking medication prescribed by the Veterans Hospital which created an allergic reaction and made him unfit to work.

The carrier witness testified that claimant was in "an unusual state which I suspected to be the result of alcohol or other substance unknown to me." The suspicion of alcohol was later borne out by the fact that Mr. Tounzell pled guilty to operating a vehicle while under the influence of alcohol in the court case prompted by the incident here under investigation. On the date in question which, incidentally was the claimant's birthday, it appeared that he did partake of alcoholic beverages. This fact coupled with medication accounts for such behavior.

It is clear that there was a violation of the Rules as charged. It is interesting to note that while claimant's past record was not exemplary, it did show a steady rate of promotion.

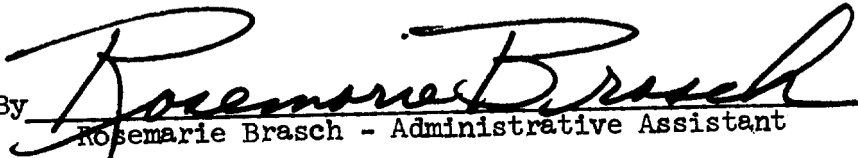
While the violation of such rules are indeed a serious matter the Board is not convinced that the ultimate industrial penalty is warranted. Mr. Tounzell has suffered considerable financial loss during his absence from work and it is believed that such penalty will be remedial in nature. We admonish the grievant that he must conduct himself in a manner prescribed by the necessary rules or suffer more severe consequences.

A W A R D

Mr. Tounzell will be returned to service with the carrier without pay for time lost but with seniority unimpaired.

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 16th day of April, 1980.