

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { System Federation No. 4, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Firemen & Oilers)  
Western Maryland Railway Company

Dispute: Claim of Employees:

1. That under the current agreement Laborer Richard E. Watts was unjustly dismissed from all service of the Western Maryland Railway Company.
2. That accordingly the Carrier be ordered to restore Richard E. Watts to the service of the Western Maryland Railway Company with seniority unimpaired, made whole for all lost wages, vacation rights, health and welfare benefits, sickness benefits, and any other benefits he would have earned under the present agreement.

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.

On June 28, 1977, claimant had been employed by the carrier as a Dock Helper at the Port Covington Piers in Baltimore since 1970. After an investigation and hearing on July 6, 1977, claimant was dismissed from service for violating Rule 7 of the Carrier's safety manual. Rule 7 states:

"7. The use or possession of intoxicants or narcotics by employees during their tour of duty or while on Company property is forbidden and is sufficient cause for dismissal.

The use of intoxicants or narcotics by an employee subject to call is forbidden. If there is evidence that an employee has been using intoxicants or narcotics when being called for duty, when reporting for duty, or while on duty, he must not be permitted to perform any further service.

Employees must not be permitted to perform service if there is evidence they are under the influence of barbiturates, tranquilizers, or antihistamines."

The union contends the testimony at the hearing was unreliable and the evidence adduced did not support the charge and urges this Board to reinstate the claimant and make him whole pursuant to Rule 32 of the applicable agreement.

Three witnesses observed the claimant's behavior on the night of June 28, 1977 during his regular work hours. All three (the Chief Operator, the Sergeant, and the Assistant Trainmaster) stated the claimant had bloodshot eyes, an odor of alcohol on his breath, spoke incoherently and was in a confused mental state. So, it was reasonable for the hearing officer to conclude that the underlying cause of the claimant's abnormal behavior was alcohol.

Furthermore, the record contains two additional, but substantial pieces of evidence that support a finding that the claimant violated Rule 7. Immediately after the witnesses observed the claimant's impaired mental and physical state, the carrier's chief medical officer, with the claimant's consent, took a blood sample which when tested disclosed a blood alcohol content of 253 mg. percent. The organization has challenged the doctor's impartiality since he was employed by the Carrier, but the record fails to reveal any evidence that the simple blood test was not administered according to proper medical procedures. The results of the test proved that claimant was intoxicated under Maryland law. In addition to the blood test, the claimant admitted not only that he had earlier consumed alcoholic beverages but also that he disobeyed Rule 7. The transcript sets forth the claimant's admission as follows:

"Q. Rule 7 reads in part '... the use of intoxicants by an employe subject to call is forbidden. If there is evidence that an employe has been using intoxicants or narcotics when being called for duty, when reporting for duty, or while on duty, he must not be permitted to perform any further service...' What is your understanding on this portion of Rule 7 that I have just read?

A. It explained to me that I shouldn't have been drinking ... with alcohol in my system. That and it also says that I could be terminated if I did.

Q. Since you have indicated an understanding of this rule, in view of the statements that have been presented plus the contents of Exhibit A, did you comply with the provisions of Rule 7 on June 28, 1977?

A. No I didn't."

Thus, this Board finds substantial evidence in the record to justify the dismissal of the claimant.

A W A R D

Claim denied.

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Award No. 8321  
Docket No. 8190  
2-WM-FO-'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 16th day of April, 1980.