

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

Parties to Dispute: { System Federation No. 16, Railway Employees'  
{ Department, A. F. of L. - C. I. O.  
{ (Carmen)  
{ Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That under the controlling Agreement the Norfolk and Western Railway Company unjustly dismissed Carman John A. Pipp from service on November 25, 1977, as a result of investigation held on November 2, 1977, at Chicago, Illinois.
2. That the Norfolk and Western Railway Company be ordered to immediately reinstate Carman John A. Pipp to service, make him whole for all time lost beginning August 31, 1977, make him whole for all seniority and vacation rights, and all other rights and privileges that belong to him by contract during the period of unjust dismissal.

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 was dismissed, following an investigation, on the charge of being under the influence of intoxicants while on duty.

Claimant was employed as a Carman at Carrier's Calumet Yard piggyback trailer loading and unloading facility. On August 31, 1977, at about 4:55 P.M. Claimant was injured while unloading trailers from flat cars and was taken to a local hospital. A blood test revealed that Claimant's blood contained a level of 146.00 milligrams of alcohol with a level of 0.00 milligrams being normal.

On September 28, 1977, Claimant was notified that a formal investigation would be held on October 20, 1977. At the Organization's request, the hearing was postponed until October 25 and again postponed until November 2. Carrier charged Claimant with violating Rule "G" of Carrier's Safety Rule Book, which reads:

"The use of alcoholic beverages, intoxicants or narcotics by employees subject to duty, or their possession or use while on duty or on company property is prohibited."

The record discloses that shortly after ending his tour of duty at 12 Midnight, Claimant met some friends and "had a few drinks" until about 5:30 A.M.; that he then went home, ate breakfast, slept until about 2:45 P.M., ate lunch, and then drove to work after picking up two fellow employees, members of his car pool.

A carrier witness reported on his investigation of city and state standards for determining whether and when an individual is determined to be under the influence of intoxicants and submitted at the hearing a copy of the Illinois State Statute 11-501, Persons Under the Influence of Intoxicating Liquor or Narcotic Drugs, as well as the Chicago Police Department Form DSD DC-34, Notice of Request to Submit to Test of Breath to Determine Intoxication. Both documents state that a reading of 0.10% (one-tenth of one gram) of alcohol in the blood establishes a presumption of being under the influence of intoxicating liquor. Claimant's blood count of 146.00 milligrams, under this formula, equaled 14.6% grams of alcohol.

Claimant's witnesses, the two fellow employees who rode to work with him on the day of the incident, testified that Claimant was not under the influence of alcohol.

The Organization charges that Claimant failed to receive a fair and impartial hearing, citing, among other reasons, the Hearing Officer's denial of the Local Chairman's request for a recess, for private talks with Claimant, and for time to obtain witnesses for Claimant. Based on the record before us, there is no evidence to these charges.

As to the merits, we must attach considerable weight to the Report of Personal Injury which includes the results of the laboratory test to the effect that Claimant's blood contained 146.00 mg. alcohol. That record, in conjunction with the city police and state statutory standards for determining when a person is "under the influence", in our judgment supports Carrier's charge and satisfies the evidentiary requirements of the burden of proof. The lab test disclosed a blood alcohol content far in excess of the level used by both city and state authorities to determine when an individual is under the influence of intoxicants.

This Board has on many occasions held that proven violations of Rule G do not constitute minor infractions and hence warrant dismissal from service.

The fact that Claimant did his drinking while off duty and prior to his scheduled shift does not mitigate the offense if the amount of such drinking adversely affected his ability to perform effectively and safely when reporting for duty, especially in the hazardous work of unloading trailers from flat cars. Carrier has a right to expect its employees to report for work in a sober manner. The high level of alcohol found in Claimant's blood shortly after he reported for duty indicates that Claimant's alcohol intake was such as to warrant the finding that he was "under the influence".

Claimant admitted his familiarity with Rule G. Under the circumstances, we conclude that Claimant did violate a known rule and that he was aware of the consequences of infraction. The Carrier's action in dismissing Claimant from its service, given the record before us, was neither arbitrary nor capricious. The precedent is well established that this Board should not substitute its judgment for that of Carrier's in discipline cases where it has produced substantial evidence in support of the charge. We have no alternative but to deny the claim.

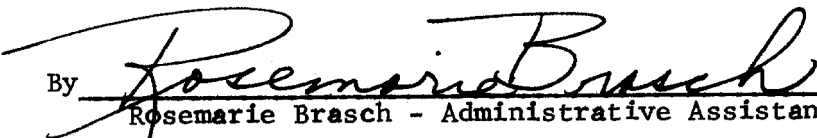
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of July, 1980.