

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Carmen
{ Portland Terminal Railroad Company

Dispute: Claim of Employees:

- (1) That the Portland Terminal Railroad Company has unjustly dealt with Carman M. J. Elizer, Portland Terminal Railroad Company, Portland, Oregon when he was dismissed from service on October 6, 1978 for allegedly violation of General Rules A and G, Rules 700 and 702 of the P T R R.
- (2) That accordingly the Portland Terminal Railroad Company be ordered to reinstate M. J. Elizer to his former position as stated in Rule 37 of the Agreement dated November 1, 1976, with all vacation and seniority rights, all Health and Welfare Insurance Benefits, all credit under Railroad Retirement and Unemployment Insurance Benefits, pay for all lost time at the pro rata rate of pay of a Carman during the period of his dismissal, and any other benefits he would have earned while dismissed from service.

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, M. J. Elizer, a carman, was discharged from service on October 6, 1978. He was charged with being under the influence of alcohol and sleeping on the job the night of September 22-23, 1978. Claimant alleges that he was not under the influence of alcohol and that he executed his duties as ordered. He does not, however, deny that he was asleep on the job.

A careful review of the record reveals that claimant was not denied any substantive and procedural rights and was given a full and fair hearing.

The record also shows that claimant was guilty as charged and carrier's action in this instance must stand. It is well established that this Board is not the original trier of facts and that it will not substitute its judgment for that of a carrier where proper procedures have been followed. Three witnesses testified

that claimant exhibited signs of being under the influence of alcohol. Further, claimant admitted that he was asleep. We find nothing in the record to indicate a reversal is called for.

As to the severity of the penalty, dismissal from service, the Board does not agree that it is arbitrary, capricious, or unwarranted. We have repeatedly held that drunkenness on the job is a serious offense. It is clearly a danger to the health and safety of the employee himself and to his fellow workers and can place the property of carrier and carrier users in jeopardy. Without question, carrier has the right to exact the most severe penalty within its power, that of dismissal. Claimant's past record for his previous two years of service does not mitigate the penalty.

It is the opinion of this Board that carrier did not violate the rules of the agreement and that the penalty imposed should stand.

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 30th day of September, 1981.