

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company (Texas and Louisiana Lines) violated the controlling agreement, particularly Rule 34, when they arbitrarily suspended Carman H. C. Whitaker from service for a period of sixteen (16) days beginning June 8, 1979.
2. That accordingly, the Southern Pacific Transportation Company, (Texas and Louisiana Lines) be ordered to compensate Carman Whitaker for all monetary losses which he may have suffered due to the unjust suspension and the claim is being submitted for a total of twenty-one and one-half (21-1/2) working days due to the fact that Carman Whitaker would have worked the 4th of July, which was a regular assigned work day for him, and also due to the fact that the certified mail, return receipt requested, did not arrive to Mr. Whitaker's home until July 6, 1979, causing an excessive delay to him in reporting to work.

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 assessed a 16 day calendar suspension following an investigative hearing held on June 26, 1979. He was charged with being under the influence of alcohol, while on duty on June 8, 1979 in contravention of Rule G of the Rules and Regulations governing Mechanical Department Employees of the Southern Pacific Transportation Company. This Rule provides that:

"The use of alcoholic beverages, intoxicants or narcotics by employees subject to duty, or their possession, use, or being under the influence thereof while on duty or on Company property, is prohibited.

"Employee shall not report for duty under the influence of, or use while on duty or on Company property, any drug, medication or other substance including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety."

Claimant subsequently appealed this disposition, consistent with Agreement procedures, on both procedural and substantive grounds and the dispute is presently before this Board.

In defense of his position, Claimant contends that he was not afforded a fair and impartial investigation as required by Agreement Rule 34 since the Plant Manager was not only the Carrier officer who signed the June 12, 1979 Notice of Investigation, but was also the official who suspended him from service and then declined his petition at the first stage of the appeals process. He further argues he was chewing mints to cover his breath as a result of a tooth extraction and that it was never established by any of the accusatory supervisors, whether the odor they detected was from mints or alcohol.

Carrier contends that he was provided an impartial administrative investigation since he was permitted ample opportunity to conduct a vigorous and competent defense and argues that it was not impermissible for the Plant Manager to assume the different roles cited by Claimant. It asserts that the Plant Manager did not appear as witness or act in a manner that was prejudicial to his interests and the varied roles he assumed was legally sanctioned by the decisional law of the National Railroad Adjustment Board. In addition, it asserts that the evidence of record, particularly, the pointed and corroborative testimony of the Electrical Foreman and Probationary Foreman unmistakably demonstrate that Claimant was under the influence of alcohol.

In our review of this case, we concur with Carrier's position on both the procedural and substantive arguments raised. Close reading of the investigative record does not reveal that Claimant's due process rights were violated. The Plant Manager did not testify at the hearing or conduct himself in any way that was detrimental to Claimant's defense. The fact that he assumed multiple roles in the investigation is not inconsistent with the judicial guidelines and standards articulated by the various Divisions of the National Railroad Adjustment Board. In Second Division Award 5360, which conceptually parallels this case, the Board held that:

"It is not improper for the same official of the Carrier to sign the notice of the charges against the claimant, to conduct the hearing, to read the claimant's previous disciplinary history into the record, and to sign the notice of the claimant's discharge. There is nothing inconsistent with the mixing of these functions and the holding of a fair hearing."

We find this decision on point with the essential facts herein.

Correlatively, when we review the substantial merits of this case, we must give credence to the supervisors testimony. After discovering that Claimant was under the influence of alcohol as evidenced by his odor and general demeanor, the Electrical Foreman waited until his disquieting observation was fully confirmed by the Probationary Foreman. The record does not reveal that they hastily assessed his condition, but instead shows that they carefully studied his behavior and agreed jointly that the odor exuding from him was alcohol. We recognize, of course, that Claimant denied the allegations, but we believe that the supervisors were unbiased and objective when they concluded that he was under the influence of alcohol. There was certainly no reason to conclude from the record that they were out to discipline him. It might well be that medical tests were not administered to ascertain his condition, but it is settled practice in the industry for laymen to determine whether an employee is under alcoholic influence. In Second Division Award 5704, which we find persuasive herein, the Board held in pertinent part that:

"Although no medical tests were made to determine whether Claimant was actually intoxicated, laymen are competent to make such a determination. Third Division Awards Nos. 15574, 10928, and 8993. Here both Carrier witnesses agreed as to the condition of Claimant, and such evidence is of probative significance."

The supervisors' testimony was the more credible in this instance and of necessity, we must uphold Carrier's disciplinary decision.

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 28th day of October, 1981.