

The Second Division consisted of the regular members and in addition Referee Paul C. Carter 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 Rules 34 and 28 when they suspended Carman T. Keller from service March 2, 1979, and dismissed him from service on March 19, 1979, following investigation held on March 9, 1979.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to compensate Carman Keller as follows:
 - a) Reinstatement him to service with all seniority rights unimpaired, vacation rights and all other benefits that are a condition of employment unimpaired;
 - b) Compensation of all monetary losses retroactive to March 2, 1979, with 6% annual interest until restored to 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 Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The claimant herein had been in Carrier's service about six months and was carman at Carrier's Englewood yard at Houston, Texas, with assigned hours 3:00 P.M. to 11:00 P.M. On March 2, 1979, it was noticed by supervisory personnel that claimant appeared to be under the influence of intoxicants. He was relieved from duty at approximately 5:05 P.M., and on March 5, 1979, the Assistant Superintendent wrote him:

"You are charged for being under the influence of intoxicants which may be a violation of Rule G of the General Rules and Regulations of the Southern Pacific Transportation Company while on duty as carman, Englewood Yard, March 2, 1979, after reporting for duty at approximately 3:00 PM.

Investigation will be held at 8:30 AM, Friday, March 9, 1979, in the office of Assistant Superintendent, Englewood Yard, Houston, Texas."

Carrier's Rule "G" reads:

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

Employes 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."

The investigation was held as scheduled and on March 19, 1979, claimant was notified of his dismissal from service. A copy of the transcript of the investigation has been made a part of the record. We have reviewed the transcript and find that none of claimant's substantive procedural rights was violated. In the investigation the Local Chairman protested the multiple roles of C. E. Day on the ground that Day was the officer who questioned claimant on March 2, 1979, the officer who preferred the charges, the officer who relieved claimant of his duties and also appeared as a witness at the hearing. The record shows that Day was not the conducting officer of the investigation. The Terminal Superintendent was the conducting officer. Many awards of the different Divisions of the National Railroad Adjustment Board have upheld the multiplicity of roles as ascribed to Mr. Day. See Second Division Award No. 7196 involving the same parties, as well as Second Division Award No. 5360. We think it well to again point out that disciplinary proceedings are not criminal proceedings and that the strict rules of evidence do not apply.

We find that the investigation was conducted in a fair and impartial manner. There was substantial evidence adduced at the investigation in support of the charge against the claimant. Many awards of this Board have held that laymen are competent to judge intoxication. See ~~Second~~ Division Awards 5704, 6373, 6955. The record shows, however, that claimant was offered a blood test but said he "was afraid of needles". While there ~~were conflicts~~ in the testimony given at the investigation, it is well settled that this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses.

There is no proper basis for this Board to interfere with the discipline imposed by the Carrier.

A W A R D

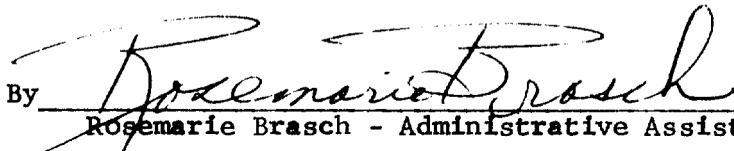
Claim denied.

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Award No. 8927
Docket No. 8789
2-SPT-CM-'82

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 24th day of February, 1982.