

The Second Division consisted of the regular members and in addition Referee Edward M. Hogan when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers  
{ Consolidated Rail Corporation

Dispute: Claim of Employee:

1. That, in violation of the current agreement, Laborer Paul E. Gromoll was unjustly dismissed from service of the Carrier following trial held on June 20, 1980.
2. That, accordingly, the Carrier be ordered to make the aforementioned Paul E. Gromoll whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10%) percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of 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 was charged with the use and possession of alcoholic beverages during his tour of duty. A formal investigation was held, and subsequently the Claimant was dismissed from the service of the Carrier. The facts of the case deduced from the record indicate that the Claimant was off the property of the Carrier with the permission of his foreman to pick up a package of cigarettes. While the Claimant was off the property, he was observed by two train masters. They stopped the car in which they were driving and called the Claimant to come to the Car. At this point, the facts diverge. The two train masters allege that the Claimant was in possession of a bottle of beer, and that they saw him take two sips. Claimant maintained that the bottle was Vernors ginger ale. This Board will not upset the conclusions of fact drawn from the actual testimony and demeanor of witnesses at a duly held investigation, absent of clear showing of arbitrary, capricious, or unreasonable action.

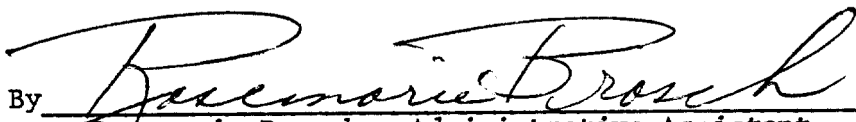
The Organization argues that dismissal in this case is too harsh of a penalty given the clean service record for at least five years of service that the Claimant had with the Carrier. Our review of the record indicates that prior to the occasion of this charge, Claimant had a clean disciplinary record and there was no other indication that he was not an excellent employee. Therefore, under the circumstances presented in this case, this Board finds that the penalty of dismissal is unusually harsh.

A W A R D

Claim sustained, Claimant to be reinstated with no back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April, 1982.