

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

Parties to Dispute: { Sheet Metal Workers' International Association
{ Consolidated Rail Corporation

Dispute: Claim of Employee:

1. That the provisions of the current agreement Rule 7 in particular has been violated account Sheet Metal Wk. (Pipefitter) Martin A. Myers was given formal investigation, held on July 16, 1979, resulting in excessive discipline being rendered, in that he was dismissed from service effective July 25, 1979.
2. That because of such excessive discipline being rendered, that the Carrier be required to re-instate and compensate Mr. Martin A. Myers for all time lost, the record of his dismissal be removed from his personal record and that he be made whole for all fringe benefits during the time 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 dismissed from the service of the carrier following a formal investigation on the charges of violation of Rule 4002 of the Maintenance of Equipment Safety Rules and conduct unbecoming an employee, to-wit: drinking on the carrier's property during working hours.

This is an extremely difficult case that was not only forcefully and well argued by the parties, but also one arising out of an undercover investigation by railroad security personnel from which numerous other cases have been argued or are pending before this Board. We will strictly confine and limit our consideration to the facts presented in this appeal alone.

The Organization contends that the evidence as presented at the hearing was not substantial or of such a credible nature as to warrant a finding of guilt and the subsequent imposition of the dismissal against the Claimant. The principle testimony in question was that presented by Conrail Undercover Security Officer Bedra.

The central issue in this case is that of the credibility of witnesses. This Board is not a trier-of-fact; it does not have original jurisdiction. Absent a patently unreasonable conclusion, abuse of discretion, or arbitrary or capricious behavior on the part of the hearing officer, this Board will not overturn the reasonable conclusions as to the probative value and weight of the evidence as determined by the hearing officer. We maintain this position for long-settled and valid reasons -- only the trier-of-fact receives the evidence, hears the testimony, and observes the demeanor of the witnesses. The reasonable conclusions drawn from all the testimony will not be upset by this Board substituting its judgment for that of the opinion, differing viewpoints as to evidence, and diametrically opposed testimony. However, we find no unreasonable conclusions as adduced by the hearing officer in an objective review of the record in this case. (See Second Division Awards 1809, 3676, 6084, 6372).

This Board is extremely careful to fully examine allegations of abuse of discretion and arbitrary or capricious behavior on the part of the hearing officer. Here, after a painstaking review(*), we find none so as to overturn the findings and penalty. Although employees have long viewed undercover activities on the part of the employer (in the railroad industry as well as all others also) with antipathy, we cannot say that this was an unpermitted or illegal activity.

The safety of all employees is jeopardized by the consumption of drugs or alcoholic beverages on the carrier's property during working hours. To permit this activity, or to treat it lightly, would not only be a disservice to the carrier, but also more importantly, to the hundreds of other employees in the employ of the carrier.

A W A R D

Claim denied.

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 30th day of June, 1982.

(*) We further find that a typographical error exists in Awards of previous cases as supplied to the Board by the Carrier in this case.