

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

Parties to Dispute: (International Association of Machinists and
Aerospace Workers
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

That Machinist Apprentice T. H. Yeargan, Jr., was improperly removed from duty on May 9, 1978, pending investigation, and, subsequently, unjustly dismissed on May 26, 1978.

That, accordingly, Machinist Apprentice T. H. Yeargan, Jr., be reinstated to the service of the Carrier, compensated for all lost wages, with seniority unimpaired and made whole for vacation, insurance and all other benefits to which he may be entitled in accordance with the controlling Agreement.

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.

At the time of his termination from service, Claimant, Thomas H. Yeargan, Jr., was a Machinist Apprentice in the Mechanical Department at Carrier's Radnor Shops in Nashville, Tennessee. On the night of the incident, May 9, 1978, which led first to his suspension and then subsequently to his discharge, Claimant was assigned to work the third shift which commenced at 11:00 P.M. Claimant was charged with reporting for work under the influence of an intoxicant and with threatening one of his supervisors, Assistant Department Foreman, R. L. O'Neal. Carrier issued notice of charges to Claimant in a letter dated May 11, 1978 and apprised him an investigatory hearing had been set for May 17, 1978. The hearing was held as scheduled and thereafter in a letter dated May 26, 1978, Carrier notified Claimant that based on the evidence adduced at the hearing he had been adjudged guilty of the charges and accordingly was dismissed from its service. At such time Claimant had been in Carrier's employ for a total of approximately 3 1/2 years.

The record evidence reflects that Claimant just two (2) days prior to the date of the incident sustained a work related on-the-job injury wherein he severed the end of one of his fingers. A Carrier physician prescribed pain pills for the condition and Claimant was advised to take one pill every four (4) hours. Prior to reporting to work, Claimant related he took a pain pill at 8:00 P.M., but because it was ineffective in relieving the pain he took another pill at 10:00 P.M. The

Claimant acknowledged further that earlier in the evening of May 9, 1978, he drank one (1) beer, unaware of effects, if any, this would have on him in combination with the pain pills, as the Carrier physician did not address himself to this situation when prescribing the medication.

At the beginning of the shift, Foreman O'Neal conducted a safety meeting and at the same time gave out work assignments. As he did so, he was interrupted by the Claimant who made some derogatory comments about a fellow employe who was running late. O'Neal, according to his account, at first ignored the Claimant, but when interrupted again took notice of him and closely scrutinized his demeanor. O'Neal related he observed that the Claimant was staggering, that he was slurring his words and that his general appearance was askew. O'Neal also indicated the Claimant's breath smelled of alcohol. As a result, O'Neal did not give the Claimant his work assignment but instead instructed the Claimant to accompany him to his office. At first, according to O'Neal, the Claimant ignored him and when asked again retorted he would come into the office when he was ready. O'Neal then left Claimant, stepped into his office, informed two other supervisors of the situation and then asked the Claimant a third time to come into the office. In the meantime a Special Agent, Sidney Simpson, was summoned to the scene. According to testimony elicited at the investigatory hearing, Claimant, in the presence of O'Neal, Simpson and the two other supervisors, Gibbs and Strickland, admitted he had been drinking, that is, he had had a few beers prior to reporting for work. O'Neal then informed Claimant he could not work his shift and requested Special Agent Simpson to escort the Claimant from the property. At this juncture, according to testimony of the several supervisors and Special Agent Simpson, the Claimant threatened O'Neal by stating that if he lost his job he would see to it that O'Neal lost his job too and that if he ever came back onto the shift he would never get another locomotive for him. Further, the record evidence reflects the Claimant threatened to whip O'Neal. Ultimately, because of his physical condition, it was determined that the Claimant, unable to drive himself, be driven home by Strickland.

Carrier argues the evidence is substantial in proving the charges against the Claimant and that the subject discipline of termination should be upheld. The Organization on the other hand argues the Claimant's physical condition was not due to his being intoxicated but rather was a result of the medication he was taking at the time for pain and the fact that he had taken a double dose of the pills within a two (2) hour rather than a four (4) hour interval. The Organization further argues the Claimant's otherwise unblemished work record for the whole of his employment with the Carrier, amounting to three and one-half (3 1/2) years should serve as a mitigating factor in reducing the quantum of discipline imposed here. Under all the circumstances the Organization asserts the discipline of discharge is excessive and therefore the Claimant ought to be reinstated.

In our review of the entire record we find that a preponderance of the evidence supports Carrier's charge the Claimant was both intoxicated and insubordinate on the night of May 9, 1978, when he reported for work. At the same time we sympathize with the Claimant's loss of part of his finger sustained while in the performance of his job and the pain which he experienced at the time because of this injury; but we also view as extremely poor judgment, the Claimant's willful act of drinking beer, no matter what the quantity consumed, in conjunction with his taking pain medication. We are inclined nevertheless to accord merit to the Organization's argument that the Claimant's past unblemished work record should serve as a mitigating factor in the diminution of an otherwise proper quantum of discipline.

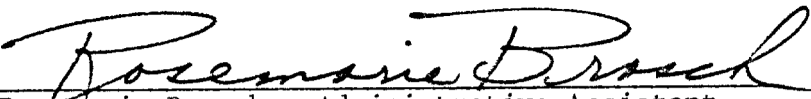
Therefore we find the Claimant's termination shall be converted to a disciplinary suspension equal in length to the date of his discharge to the date of his reinstatement.

A W A R D

Claim sustained in part as per findings. Carrier is directed to convert the discharge into a disciplinary suspension and to reinstate the Claimant with seniority but without backpay or other fringe benefits.

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 22nd day of July, 1982.