

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That the Elgin, Joliet and Eastern Railway Company unjustly withheld Temporary Carman Kevin Darby from service for four (4) hours on September 14, 1979 and subsequently suspended him from service for thirty (30) days (October 15, 1979 through November 13, 1979) as a result of an investigation held on October 3, 1979 in violation of the controlling Agreement, specifically Rules 100 and 101.
2. That the Elgin, Joliet and Eastern Railway Company be ordered to compensate Temporary Carman Kevin Darby for four (4) hours on the date of September 14, 1979 and further compensate him for the thirty (30) day suspension.

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.

The claimant was a Temporary Carman employed for almost a year at the carrier's facility in Joliet, Illinois.

He was first withheld from service for four (4) hours and then, after subsequent hearing, he was suspended for a period of thirty (30) days on the charge of "The use of intoxicants while subject to duty ... and while on duty. The possession of intoxicants ... while on duty and while on carrier property."

The employees, on behalf of the claimant, assert that the carrier violated Rule 100 which reads, in part, "a) No employee should be disciplined without a fair hearing by a designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule." (Emphasis added).

They also allege that the carrier failed to prove the charges against the claimant and that he did not receive a proper hearing since a test for alcohol was

never performed and a proper search conducted.

Moreover, they claim that his past record was improperly used in arriving at the penalty.

The Board, however, is convinced otherwise. The carrier's supervisors exercised due discretion in handling this matter. First, the supervisor who witnessed the claimant drinking on his lunch hour watched the claimant drink from a beer can, kept the can in view when it was discarded, retrieved it after the claimant left, had its remaining contents verified by another supervisor and immediately brought the claimant to his office for questioning.

Further, the truck in which the claimant consumed the beer was searched by supervision and the unconsumed remnants of a six-pack were retrieved. In further evidence of the veracity of the charges, the claimant admitted that the can the supervision had retrieved and saved for evidence was his. On page 8 of the transcript the General Foreman questioned the claimant "When I first entered the office and showed you the beer can I understood you to say yes, it was yours, you were drinking it ..." The claimant answered, "'Yes it was my can' was all that I said, and you said the rest..."

The contents of the can from which the claimant had been drinking were verified by two supervisors and it is not a requirement that they be subject to chemical analysis for identification.

The search of the vehicle in question was conducted in proper fashion after the claimant had been suspended. Three empty cans and two unopened cans of beer were discovered. They were of the same brand that the carrier representative testified the claimant had been drinking and the two unopened cans were in a wet paperbag, according to testimony at the hearing. The claimant had driven the vehicle onto the carrier's property and thus must be said to have been in possession of intoxicants.

The matter of suspension being restricted "to proper cases" does not limit the carrier's action in this case. In fact, Rule 100 has been appropriately applied and is deemed a "proper" one for the application of suspension prior to the hearing.

With respect to the degree of discipline, it is not for the Board to substitute its judgement except under very limited and extenuating circumstances. Further, the employees' objection to the carrier having considered the claimant's record in determining the penalty is ill-founded. The claimant's conduct must be considered in the context of his prior behavior. Moreover, frequently an "unblemished record" is used by employe organizations as a rationale in requesting leniency. Thus regardless of when this record entered into the carrier's calculation of the disciplinary penalty, it is justly and properly an element to be considered in such determination.

Therefore the Employees' assertion on behalf of the claimant are without merit and the grievance is denied.

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Award No. 9281
Docket No. 8905
2-EJ&E-CM-'82

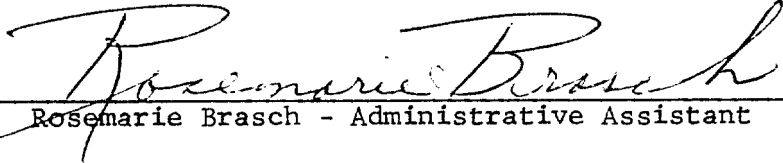
A W A R D

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 4th day of August, 1982.