

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
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(Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That Painter Tentative, Gary L. Tate was unjustly dismissed from service as result of investigation held in Plant Manager - Administration, Office at Huntington Locomotive Shops, 1:30 p.m., Friday, March 2, 1979, in violation of Shop Crafts Rule 37.
2. Accordingly, Painter Tentative, Gary L. Tate is entitled to be reinstated to service with seniority, vacation rights, and all other benefits that are a condition of employment unimpaired, with compensation for all time lost plus 6% annual interest, also, reimbursement for all losses sustained due to loss of coverage under health and welfare and life insurance agreements during 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 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.

Claimant, a Painter Tentative at Carrier's Huntington Shops, Huntington, West Virginia, with seniority date of June 19, 1978, was charged with the following infraction:

"... conduct unbecoming an employee of ... (Carrier) ..., having reported for duty in an intoxicated condition and falsely claiming personal injury on Company property at Huntington Shops, at approximately 3:30 p.m., December 18, 1978."

The specific details of said incident are that, upon arriving at work on said date, Claimant informed his supervisor, J. E. Reynolds, Foreman - Paint Department, that he (Claimant) had injured his leg as a result of a fall into the transfer table pit on Carrier's property which occurred as he was getting out of his car; and that he wanted to go to the hospital for treatment before commencing work.

Detecting "... a strong odor of alcohol on (Claimant's) breath", Foreman Reynolds contacted the Plant Manager - Production and informed him of the situation. Thereafter, Mr. Reynolds arranged to have Claimant escorted to the Family Care Outpatient Center by Chessie System Patrolman L. Y. Bayless. Upon examination by an attending physician, Claimant was diagnosed not to be suffering from any significant injury and it was also suggested at that time that Claimant's injury was sustained somewhat in advance of shift start, contrary to Claimant's allegations. After Claimant's examination, he was released from the hospital, but he did not return to work.

On December 26, 1978, Claimant was issued a statement of charges, as has been specified hereinabove, and he was instructed to attend an investigation of the matter on January 5, 1979. Said hearing, however, was postponed because of Claimant's participation in a five (5) weeks alcoholic treatment program which was conducted by the Veterans Administration Hospital in Lexington, Kentucky. Upon Claimant's release from the aforestated treatment program, which he completed successfully, an investigation hearing was conducted on March 2, 1979, and as a result thereof, Claimant was adjudged guilty as charged and was terminated from Carrier's service. Said termination is the basis of the instant claim.

In order that the background portion of this dispute is properly referenced, the record further shows that, in response to Carrier representative's questions at the investigation hearing, Claimant acknowledged that: (1) he "... had quite a bit to drink ..." before reporting to work on December 18, 1978; (2) that he was "... very unstable and very emotionally upset ... (and) ... not rationale at all"; (3) that he had a "drinking problem" which was caused by "great emotional stress"; and (4) that he had fabricated the entire story of the injured leg so that Foreman Reynolds would send him home for the remainder of the day.

Organization's position in this dispute is that Carrier's termination of Claimant was "arbitrary and capricious, and not consistent with Rule 37 of the controlling agreement". Specifically, Organization asserts that the Patrolman's transporting of Claimant to the hospital was "highly irregular" and thus discriminatory. Organization also contends that Claimant's work record while in Carrier's service has been "very impressive" and that Carrier has failed to take this factor into consideration. Lastly, Organization argues that Claimant's alcoholism is a disease and should be considered as such by Carrier; that Claimant has successfully undergone treatment for his sickness but that this factor has also been ignored by Carrier; and that other employees have "... reported for work seemingly intoxicated and no disciplinary action of any kind has been taken against them".

Stated briefly, Carrier contends that "... Claimant's guilt was conclusively proven by evidence adduced at a fair and impartial hearing and that the discipline of dismissal was fully justified". In support of the aforestated contention, Carrier argues that: (1) all matters attendant to Claimant's hearing were handled in a timely and proper manner; (2) Claimant's treatment for his alleged alcoholism was subsequent to the discharge incident and thus, any further consideration thereof "... is irrelevant to his conclusively proven guilt of the charge"; (3) the Patrolman's transporting of Claimant to the hospital was not in violation of any Rule and "... was both prudent and appropriate for (Claimant's) protection as

well as that of others and cannot be considered discriminatory"; and (4) Claimant has been employed by Carrier for only a short period of time and his work record during this period has not been "impressive" as Organization asserts as is evidenced by the fact that Claimant "... had been absent from work a total of 55 days out of a potential 195 work days."

Continuing on, Carrier further argues that the evidence of record, together with Claimant's own admissions, clearly establishes his guilt; that it is well established that "... the use of intoxicants by employees subject to duty or while on duty or on Company property is an offense warranting dismissal" (Second Division Awards Nos. 8404, 8321, 6535, 6444, 5925, 5885, 5863, 2464, 2207, 2086 and 1924); and that in view of the proven facts of this case, any consideration of granting leniency is beyond question.

The Board, upon a careful analysis of the complete record as presented, can find no good reason either in fact or in substance which would warrant rescission or modification of the discipline which has been assessed by Carrier in this dispute. Claimant's guilt has been established through his own admissions; the alleged procedural irregularities which Organization cites as being supportive of its respective position are baseless; without a proper showing that Carrier has acted arbitrarily, capriciously, unreasonably, or otherwise unjustly, any consideration of leniency lies solely within Carrier's managerial prerogatives and cannot be usurped by the Board; and finally, Claimant's inability to control his problem of alcoholism after having been given reasonable opportunity to do so by Carrier and after having successfully completed the Veteran Administration's alcoholism treatment program, thereafter relieves Carrier, most assuredly, of any further obligation in this regard.

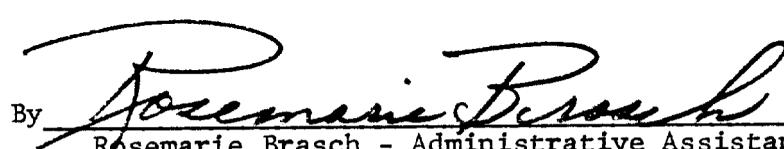
A W A R D

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 29th day of September, 1982.