

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

Parties to Dispute: ( International Brotherhood of Firemen & Oilers  
( National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer Anthony Burkley was unjustly discharged from the service of the Carrier following investigation held on July 20, 1979.
2. That, accordingly, the Carrier be ordered to make the aforementioned Anthony Burkley 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, Mr. Anthony Burkley, entered the service of the Carrier on January 9, 1978 and at the time of the alleged incident under question held the position of laborer at Carrier's Brighton Park Turbo Facility in Chicago, Illinois. On July 4, 1979 Claimant received notice to appear at an investigative hearing on July 10, 1979. He was charged with violation of Carrier Rules of Conduct "C", "I" and "J". These Rules state the following:

"C. Reporting for work under the influence of alcoholic beverages or narcotics, or the use of alcoholic beverages while on or subject to duty or on Company property is prohibited."

"I. Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome or other-

wise vicious, or who do not conduct themselves in such a manner that the Company will not be subjected to criticism and loss of good will."

"J. Courteous conduct is required of all employees in their dealing with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden. Violence, fighting, horseplay, threatening or interfering with other employees or while on duty is prohibited."

After request for postponement by Claimant, the hearing was held on July 20, 1979. On July 27, 1979 Claimant was notified by Carrier that he had been found guilty as charged and was being dismissed from service effective July 28, 1979. In subsequent appeal on property the charge of violation of Rule C was dropped because of lack of evidence.

A review of the transcript of the hearing shows that sufficient substantial evidence of probative value is present to warrant the conclusion that Claimant was in violation of Rules I and J of Carrier Rules of Conduct. This, plus Claimant's prior discipline record, which the National Railroad Adjustment Board has held can be equitably used in assessing penalties (Second Division Awards 3430 and 5182 inter alia) leads this Board to conclude that it should not disturb Carrier determination in the present case.

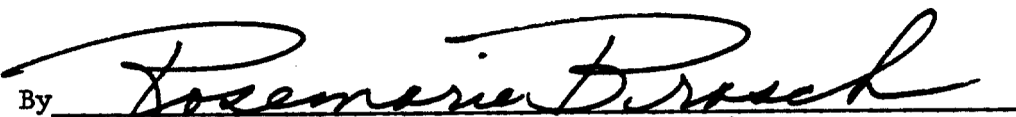
A W A R D

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 2nd day of March, 1983.