

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
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(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer R. L. Campbell was unjustly dismissed from service of the carrier following trial held on May 1, 1981.
2. That, accordingly, the Carrier be ordered to make the aforementioned R. L. Campbell 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 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.

On April 23, 1981, the Claimant was given notice to attend an investigation to be held on May 1, 1981, for the purpose of ascertaining the facts relative to an incident which allegedly occurred on April 21, 1981. It was further contended that the Claimant participated in the incident to be investigated. As a result of the investigation, the Claimant was found guilty of violation of the Carrier's rules and he was dismissed from the service.

According to the testimony of an official employed by the Carrier, the Claimant, while on duty on April 21, 1981, was observed to be sitting at a table in a restaurant, drinking beer. Another Carrier official also testified that he smelled the odor of beer and observed some cans of beer and glasses on the table at which the Claimant and one other individual were seated.

The Claimant, to dispute the Carrier's contentions, relies upon a witness employed by the restaurant who testified that the Claimant ordered only a sandwich and a ginger ale. The witness, when explaining the presence of beer cans on the table, explained that she was very busy on the date in question and did not have

a chance to clear the table before serving the Claimant.

The Board finds substantial evidence to support the Carrier's findings. However, in view of all of the circumstances and facts of record, we consider permanent dismissal to be an excessive discipline. Having thus found, the Claimant shall be restored to service with seniority rights unimpaired, but without any compensation for time lost while out of service.

A W A R D

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of July, 1983.