

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

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current agreement Firemen and Oiler John E. Dotson, was unjustly suspended on August 16, 1980, and dismissed from the service of the Carrier on September 5, 1980, following a formal investigation held on August 29, 1980.
2. That accordingly, the Carrier be ordered to make the aforementioned J. E. Dotson, whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, custom or law and compensated for all lost wages.

In addition to money claimed herein, the Carrier shall pay the Claimant an additional amount of 6% per annum compounded annually on the anniversary date of this claim.

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 had worked as a Laborer in the Carrier's employ for about three years when during duty hours on August 16, 1980, he became involved in a dispute with a fellow employee, Hostler Ruth Sales. On that date the Claimant was working as a Hostler Helper.

According to the Claimant, he voiced a pleasant greeting to Ms. Sales and made an innocent gesture as he passed her in the office, whereupon she threw a cup of coffee on him. In contrast, Ms. Sales maintains the Claimant seized her by the right arm, causing her to spill some of her coffee, whereupon she threw the rest on the Claimant. Both parties acknowledge that they then exchanged obscenities and that the Claimant threatened Ms. Sales with physical harm.

As a result of the incident the Claimant was held out of service on the same date and was immediately served with written notice to attend an investigatory hearing for alleged violation of Rule "G", quoted in pertinent part below:

"The use of alcoholic beverages or other intoxicants, narcotics or other similar substances by employees subject to duty or in their possession or use while on duty or on company property is prohibited.

The investigatory hearing was ultimately held on August 29, 1980. The Carrier's Chief Mechanical Officer determined from the hearing that the Claimant was guilty as charged and, by a September 5, 1980, letter, notified him of his dismissal. A portion of that letter is quoted below:

"I have reviewed the transcript of this investigation and the testimony therein discloses that you were, in fact, in violation of Rule 'G' and that you did have an altercation with Hostler Ruth Sales.

Witnesses testified to your intoxicated and abnormal behavior on the night in question and by your own admission you had been drinking and should not have come to work that night, clearly a violation of Rule 'G'. Also, through your own testimony, you admitted to entering into an altercation with and using abusive language to Hostler Ruth Sales."

The Organization asserts that in any argument or altercation there must be two parties involved. It also points to the fact that Ms. Sales was not cited. This omission, the Organization claims, made the investigation unfair, unjust, and in violation of Rule 19 of the controlling agreement:

"RULE 19 - GRIEVANCES

An employee shall not be dismissed or disciplined except where fault is apparent beyond reasonable doubt without thorough investigation by proper officials."

Moreover, the Organization argues, the Claimant's behavior did not harm the Carrier in any way, since the incident did not relate to Carrier operations.

The Carrier points to the testimony of four witnesses in support of its assertion that the Claimant violated Rule G:

"Asst. Shop Supt. Morris - He smelled of alcohol. His eyes at this time appeared to be bloodshot and glazed.

... he was not walking as he normally would around the property."

"Hostler Helper E. Winder - Johnny appeared to be in a intoxicated condition at the time to me ... he wasn't acting the way he usually does. His speech, walk, that wasn't normal."

"Lead Diesel Foreman R. Jurado - I'd have to say that he looked like he was feeling good ..."

With respect to the altercation itself, the Carrier notes that Ms. Sales version is substantially corroborated by the testimony of Witness Winder. Accordingly, the Carrier maintains, it is not unreasonable or arbitrary to conclude that her version is the more accurate.

After careful study of the record, the Board has concluded that the Claimant was indeed in violation of Rule G on August 16, 1980. Besides Ms. Sales, there were three witnesses who testified that he was intoxicated. The effect of excessive alcohol use is well known, and expert verification is not required where the evidence is clearly substantial. (Second Division Award 7405, Marx).

The evidence concerning the altercation itself is less clear. The record does not conclusively demonstrate that the skirmish was one-sided. It is difficult to say from a review of the evidence which person, if either, was exclusively at fault. And the Board is mindful of the plain truth expressed in the phrase, "It takes two to tango".

But the fact remains that the Claimant was not in any condition to be at work. Perhaps if he had not been drinking earlier the incident would not have occurred. Although this particular incident did no direct harm to Carrier's operations, it is entirely possible that the Claimant's condition could have caused injury to himself, to his fellow employees, or to others. Such a possibility is undoubtedly part of the reasoning behind Rule G.

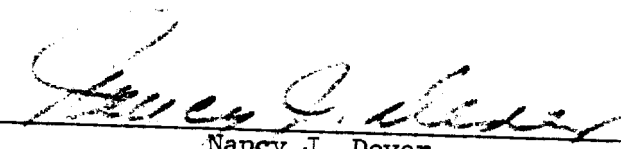
The Board has reviewed the Organization's procedural arguments as well and concludes that they are without evidentiary support. The investigatory hearing was conducted in a timely fashion and nothing in the record is sufficient to support the conclusion that it was either unfair or unjust.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 10th day of August, 1983.