

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

Parties to Dispute: (AFL-CIO Sheet Metal Workers' International Association
(
(The Chicago & North Western Transportation Company

Dispute: Claim of Employees:

1. That the Chicago & North Western Transportation Company violated the current and controlling Agreement, most flagrantly Rule 35, when Sheet Metal Worker Charles S. Thomas was unjustly suspended from service August 28, 1980, prior to investigation, which was held September 18, 1980, resulting in unjust dismissal from the Chicago & North Western Transportation Company effective September 19, 1980.
2. That accordingly, the Chicago & North Western Transportation Company be ordered to:
 - a. Immediately reinstate Mr. Thomas to service seniority rights unimpaired and compensate him for all time lost beginning from August 28, 1980, the date he was improperly withdrawn from service.
 - b. Make Mr. Thomas (Claimant) whole for all losses.
 - c. Compensate the Claimant for all overtime losses.
 - d. Compensate or make whole for claimant all holiday and vacation rights.
 - e. Pay premiums on health and welfare Travelers policy.
 - f. Pay premiums on Provident Insurance policy.
 - g. Pay premiums on Aetna Dental policy.
 - h. Pay interest on nine percent on all wages, overtime, holiday and vacation time lost.
 - i. All reference to this unjust investigation be stricken from claimant's record.

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 is a Pipefitter in the Carrier's employ for nine (9) years at its Proviso Diesel Shop. Claimant was dismissed from service following an investigation on September 18, 1980, in which he was charged:

"Your responsibility in connection with violation of Rule "G" of the General Regulations and Safety Rules while assigned as Pipefitter at the Proviso Diesel Shop on Thursday, August 28, 1980, and,

Your Responsibility for absenting yourself from duty and leaving the Chgo. Northwestern Transportation Company property on Thursday, August 28, 1980, at approximately 2:20 a.m. to 5:15 a.m. without proper authority while assigned as Pipefitter at the Proviso Diesel Shop."

Carrier's Rules 14 and "G" read in pertinent part:

"14. Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place, without proper authority.

G. The use of alcoholic beverages or narcotics by employees subject to duty is prohibited. Being under the influence of alcoholic beverages or narcotics while on duty or on Company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on Company property is prohibited."

Claimant is assigned by bulletin to work 11:00 p.m. to 7:00 a.m. with Saturday and Sunday as rest days. The incident which serves as the basis for the charges occurred on Wednesday evening, August 27, 1980. The lunch period for the Claimant was scheduled from 2:00 a.m.-2:30 a.m. There is no serious dispute that the Claimant left the property at about 2:00 a.m. and was seen re-entering the parking area in his car shortly after 5:00 a.m.

The Carrier maintains that employees were not permitted to leave the property. The record raises questions as to the degree of consistency in the Carrier's practice of not permitting employees to go off the property for lunch on this particular shift (TR-10). While some question may exist as to the Claimant's authorization to leave the property for lunch, there is no dispute "he absented himself from duty" between the hours of 2:30 a.m. until shortly after 5:00 a.m. without permission and contrary to Rule 14.

The record is also clear that the Claimant directly informed at least one supervisor and reaffirmed to two other supervisors that he had advised that supervisor he "had been to Mame's" and "had two beers" (TR 15-16) during the period in question.

At the hearing the Claimant contended that he had privately advised the General Foreman Ellrich "That I had been trying to catch my wife" (TR 15). However, the General Foreman, when called as a rebuttal witness, testified (TR 19):

"Q. Mr. Ellrich, when you first encountered Mr. Thomas on his return to the Diesel Ramp, did Mr. Thomas indicate to you any reason other than going to lunch for absenting himself from Company property?

A. Well, like I said before, Mr. Thomas' statement to me when I asked him where he was, was he said he had been at Mame's drinking beer, and quote, he said, 'I know you people are going to fire me over this so go ahead and do whatever you have to do'. And I asked him again, 'Chuck, where were you?' And he said, 'I was at Mame's drinking beer.'

Q. Did Mr. Thomas, in your presence alone, just you and him, indicate to you any other reason for absenting himself from the service of the property.

A. No.

Q. Other than being at the tavern drinking beer?

A. No.

Q. No other reason?

A. There was, well, first of all, Mr. Thomas was, Mr. Mondek was with us, in fact, all the time.

Q. Were the two of you ever by yourself out of hearing of other people during this episode.

A. No, no. Not that I can recall.

"Q. And Mr. Thomas did not relate to you any problems that he might have had or was going to encounter during the period that he was absent from the property.

A. No."

The General Foreman also reiterated on cross-examination, the Claimant had not related any domestic problems to him as the reason for his absence.

It is conceivable that the Claimant may have had a serious domestic problem at the time, and that he did not want that fact to be too widely known. However, the record does not support his contention. His reliance that his statement to the General Foreman on that night, "well you know what's happening," should offset his repeated admissions about drinking beer at Mame's is misplaced. He may well have intended to have the General Foreman privately recognize there was a domestic reason for his absence. However, there is no evidence or proof that he clearly communicated this situation. Further, no reason is proffered in the record to challenge the credibility of the General Foreman or his denial that such an explanation was given to him by the Claimant.

The Carrier's handling of the interview on the property was somewhat overactive, but not sufficiently so as to represent a violation of Rule 30. The Claimant was afforded the opportunity to seek counsel and/or union representation, but was unable to get an answer to his repeated calls (TR 9,11). His claim at the hearing that the phone "would not work" (TR-16) was never cited to the supervisor that evening, in spite of the testimony he made "several calls." Even accepting the Claimant's reluctance to submit to a blood test because "I'd rather have a man pulling a shotgun at me as a needle," the Claimant failed to make any effort to demonstrate that the Carrier was in error in its conclusion he had been drinking. He acknowledged that the Trainmaster asked him to blow in his face and he did (TR-16). The only response of the Claimant when the Trainmaster said "under the influence...he smells like a brewery" (TR-16) was "if we wasn't on railroad property, I'd punch him in the mouth" (TR 17).

A complete review of the file and the transcript of the hearing indicates that substantial evidence exists that the charges as advanced by the Carrier are supported by the record. The claimant admitted before witnesses to having been drinking, which was affirmed by the Trainmaster. Such a condition is contrary to Rule "G". Being under the influence of alcohol is a serious dismissable offense in this industry and this conclusion is supported by numerous awards. Further the record is clear that the Claimant did "absent himself from duty contrary to Rule 14."

Upon the entire record, the Board finds the Carrier's determination to be neither arbitrary nor excessive considering the Claimant's prior record of Letters of Reprimand in 1976 and 1979 for absenteeism, tardiness and going home early.

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Award No. 9784
Docket No. 9711
2-C&NW-SMW-'84

A W A R D

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 22nd day of February, 1984