

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (Int'l. Brotherhood of Firemen and Oilers
(System Council No. 44 AFL-CIO
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement Service Attendant D. L. Bennett, I. D. No. 439590, was unjustly suspended from service on January 13, 1982 and subsequently dismissed on February 3, 1982 from the service of the Louisville and Nashville Railroad Company, after a formal investigation was held on January 18, 1982.

2. That accordingly Service Attendant D. L. Bennett be restored to service at the Louisville and Nashville Railroad Company for all lost time, vacation, health and welfare, hospital, life and dental insurance be paid effective January 13, 1982 when Mr. Bennett was removed from service and the payment of 6% interest be added thereto.

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 employes 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 was formerly employed by the Carrier as a service attendant in Carrier's Osborn Yard, Louisville, Ky., with service from July, 1977. On January 13, 1982, claimant reported about twenty minutes late for his assignment, at which time supervisory personnel considered that he was under the influence of intoxicants.

Carrier's Special Agents were called, and, according to the Carrier, after some discussion claimant agreed to take a breathalyzer test. He was taken to a local hospital, but refused to take a blood alcohol test. On January 14, 1982, claimant was charged:

"You are charged with being under the influence of alcoholic beverages and/or narcotics while on duty at approximately 3:30 p.m., January 13, 1982, at Osborn Yard.

Investigation of this charge will be held at 1:00 p.m., Monday, January 18, 1982, in the office of Master Mechanic, 908 West Broadway, Louisville, Ky.

You are being withheld from service with the L&N Railroad pending outcome of the investigation.

You must be present, present witnesses you desire, and may be represented by employees of your choice."

The investigation was conducted as scheduled, and a copy of the transcript has been made a part of the record. A review of the transcript shows that the investigation was conducted in a fair and impartial manner.

There was substantial evidence presented at the investigation to support the charge against the claimant. It is well settled that laymen are competent to judge intoxication.

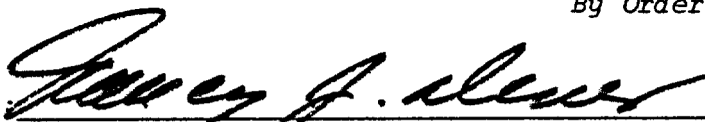
There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1984