

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Laborer T. L. Witkowski, Stevens Point, Wisconsin, was unfairly dismissed from service of the SOO Line Railroad Company effective June 28, 1982.
2. That accordingly, the Carrier be ordered to make Mr. Witkowski whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his 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 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, T. L. Witkowski, began his employment with the Carrier, Soo Line Railroad Company, as a maintenance of way employee from September to December, 1979. On March 20, 1980, Claimant was rehired as a laborer in the Mechanical Department. Throughout his employment, Claimant performed his work on the 11 p.m. through 7 a.m. shift.

On May 28, 1982, Claimant failed to report to work on time. At approximately 11:40 p.m., Assistant Roundhouse Foreman Donald Hess found Claimant looking "blurry eyed" and, seemingly, "not in control of his movements". Foreman Hess testified that Claimant smelled of alcohol. The Claimant admitted that he had been drinking six or seven cans of beer at approximately 2 or 3 p.m. that day.

As a result of the above incident, Claimant was directed to appear in an investigation concerning the following charge:

"To determine facts and place responsibility in connection with his failure to comply with the provisions of the Mechanical Department Employee Safety Rule G on Friday, May 28, 1982."

Rule G states:

"Use of intoxicants or narcotics is prohibited."

Following the investigation, Claimant was found guilty of violating Rule G and was dismissed from service.

The Organization contends that the uncorroborated testimony of Foreman Hess concerning Claimant's alleged intoxication is not enough to support the finding of guilt. Thus, the Organization argues that the Carrier's action in dismissing Claimant was arbitrary, unjust, capricious, and an abuse of managerial discretion.

Although Claimant admitted that he had been drinking six or seven cans of beer earlier that day, the Organization argues that the reason Claimant was blurry eyed and, seemingly, intoxicated was not because he was intoxicated but because he woke up late and was still half asleep when he arrived at work.

The Carrier contends that the testimony of Foreman Hess regarding his observations of Claimant's actions and appearance is sufficient to support the finding that Claimant violated Rule G. Carrier argues that such observations are ample proof of Rule G violations.

The Carrier contends that it has a right to dismiss any employee found violating Rule G. Notwithstanding such right, the Carrier does have a program for alcohol and drug problems to assist employees who voluntarily seek professional help. In limited cases, where the employee has had a long and good performance record and has successfully completed a treatment program, the Carrier has reinstated employees on a leniency basis.

The Carrier asserts that reinstatement of the Claimant is not a viable disposition of this case. According to the Carrier, the Claimant is not involved in any treatment program and has not been involved in any treatment since at least 1979. In fact, the Claimant does not acknowledge that he has an alcohol problem. Under these circumstances, Carrier argues that the reinstatement of Claimant would only result in exposing Claimant and his fellow workers to a potentially unsafe situation.

After reviewing the record in this case, this Board finds that the evidence is sufficient to warrant the conclusion that Claimant is guilty of violating Rule G. Furthermore, this Board finds that the Carrier's action in dismissing Claimant was not arbitrary, unjust, or capricious.

This Board does not dispute the ability of supervisors without specialized medical training to recognize this condition in an employee while at work. (See Second Division Award 7187.) Foreman Hess testified that Claimant was "blurry eyed", "not in good control of his movements", and that his breath smelled of alcohol. The testimony of Foreman Hess, although uncorroborated, is sufficient to uphold the finding of guilt. There is a well-established precedent to accept conclusions reached in discipline disputes based on the testimony of one witness. (See Third Division Award 21290.)

Being under the influence of intoxicants is a serious offense in this industry. It is well known that violators of Rule G are subject to discharge. (See Second Division Award 8636.) Thus, the Carrier's action in dismissing Claimant cannot be said to be arbitrary, unjust, or capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1984.