

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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( Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That Laborer Patrick Gilmartin was unjustly dismissed from service on June 21, 1982.
2. That accordingly, Laborer Patrick Gilmartin be returned to service, immediately, 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.

Also, reimbursement of all losses sustained, account loss of coverage under Health and Welfare and Life Insurance Agreements during the time 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 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, Enginehouse Laborer Patrick Gilmartin, entered the service of Carrier, Belt Railway Company of Chicago, on July 5, 1979.

By certified letter dated June 18, 1982, the Claimant was requested to attend an investigation on June 21, 1982, in connection with the following charges:

To discover the cause, develop the facts and determine your responsibility, if any, in connection with your reported indifference to duty, insubordination, and quarrelsome and viciousness to Diesel Foreman R. J. Downs, and you are being found in violation of General Rule G at 8:10 p.m., Thursday, June 17, 1982, in Clearing Diesel Shop while you were working your regular 3:30 p.m. Enginehouse Laborers assignment.

General Rule G states:

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

Employees must not report for duty under the influence of any alcoholic beverage, intoxicant, narcotic, marijuana or other controlled substance, or medication, including those prescribed by a doctor that may in any way adversely affect their alertness, coordination, reaction, response or safety."

After an investigatory hearing, Claimant was dismissed from the service on June 21, 1982. The Carrier notified Claimant that:

"...The transcript of investigation establishes your responsibility for violation of Belt Railway Company General Rules A, G, J, and H in that you were indifferent to duty, insubordinate, quarrelsome, and vicious to Diesel Foreman R. J. Downs and that you were in violation of General Rule G at about 8:10 p.m., June 17, 1982, in Clearing Diesel Shop, Chicago, while you were working your regular 3:30 p.m. Enginehouse Laborers assignment..."

The Organization contends that Claimant was unjustly dismissed from service because Carrier failed to produce sufficient evidence to substantiate the charge. Moreover, the Organization contends that the Carrier failed to meet its burden of proof that Claimant had been drinking on the night in question.

The Carrier contends that the evidence establishes the following facts: that on June 17, 1982, Shop Foreman Richard Downs could not locate Claimant; he finally found Claimant outside the shop building talking to two other laborers; the Foreman placed his left hand on the right arm of the Claimant and instructed him to return to his work location in the Diesel Shop; once they returned to the shop building, Foreman Downs attempted to give Claimant a work assignment, but Claimant stated, "Don't you ever put your hands on me again you son of a bitch"; and, "If you ever put your mother f..... hands on me you son of a bitch, I will beat the shit out of you".

The Carrier also contends that the evidence shows that during the statements of the Claimant, the Foreman detected alcohol on his breath. The Foreman called the Belt police who dispatched two officers to the Foreman's office. Both of those officers smelled alcohol on the Claimant's breath. Moreover, the Foreman saw the other characteristics of the Claimant, which denoted drunkenness, such as slurred speech, erratic mannerisms, and bloodshot eyes, which convinced the Foreman that the Claimant had been drinking.

Carrier argues that the use of alcohol is a serious offense in the railroad industry and that numerous awards have held that management need not tolerate such conduct.

This Board has reviewed all of the evidence and testimony in this case, and it finds that there is sufficient evidence in the record to support the finding that Claimant violated Rule G, which prohibits employees from being intoxicated on the job. This Board also finds that the Claimant acted in a threatening and abusive manner toward his supervisor. This Board rejects Claimant's contention that nothing of the sort happened.

Hence, this Board finds that Carrier was justified in finding the Claimant guilty as charged.

Moreover, this Board will not normally set aside the disciplinary action taken by a Carrier unless it is arbitrary, discriminatory, or capricious. Since the Claimant has previously received a four-month suspension from December 8, 1982, to April 20, 1983, for a previous violation of Rule G (reduced from a dismissal), as well as two other suspensions for other wrongful behavior, this Board finds no basis to set aside the penalty of dismissal issued by the Carrier in this case.

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 14th day of November 1984.