

Form 1	NATIONAL RAILROAD ADJUSTMENT BOARD SECOND DIVISION	Award No. 10410 Docket No. 10549 2-AT&SF-MA-'85
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The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: ( International Association of Machinists  
( and Aerospace Workers  
(  
( Atchison, Topeka & Santa Fe Railway  
( Company

Dispute: Claim of Employes:

1. That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the Carrier) improperly dismissed J. D. Whitfield (hereinafter referred to as the Claimant) from Carrier Service on September 17, 1982, as result of formal investigation conducted on September 17, 1982.
2. That the Carrier be ordered to compensate Claimant for all loss of wages from September 17, 1982 to date of restoration to Carrier service with all rights and fringe benefits made whole.

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 were given due notice of hearing thereon.

The Claimant entered the service of Carrier as a Machinist on September 3, 1968. On September 17, 1982, he was dismissed from service as the result of a formal investigation on charges that he allegedly consumed alcoholic beverages when subject to duty, and was absent without permission in violation of Rule 2, amended Rule 6, Rules 15, 16 and Form 2626 Standard, General Rules for the Guidance of Employees.

The Organization does not dispute the fact that on June 2, 1982, the Claimant's wife advised the Carrier two hours before the start of his 11:00 p.m. shift that Claimant would be unable to report for work because it was his birthday, and he had consumed "a few alcoholic drinks." Claimant later admitted to the Carrier's District Supervisor that he had consumed four or five drinks, and could not have worked in that condition.

The Organization argues that Claimant was denied a fair and impartial investigation, and that Claimant properly held himself out of service and notified the Carrier in compliance with Rule 6 and Rule 15. The Organization further objects to Carrier's consideration of Claimant's prior discipline record.

The Carrier strenuously maintains that Claimant's guilt of the charge of drinking while subject to duty, and the charge of unauthorized absence from duty were clearly established by the evidence of record. Carrier contends that the seriousness of the offense, and Claimant's prior record, justified discharge.

Claimant was absent from the formal investigation held on September 17, 1982. The investigation was originally scheduled for June 29, 1982, but was postponed six (6) times at the request of the Organization. Although the Claimant did receive medical treatment prior to the investigatory hearing on September 17, 1982 the evidence does not support the contention that Claimant was disabled and, therefore, unable to attend the hearing. A letter from Claimant's physician dated September 7, 1982 which was presented at the investigation acknowledges his treatment of Claimant, and stated that further surgery was scheduled for September 23, 1982. The physician's letter provided that the Claimant's estimated time out of work would be four (4) weeks from the time of surgery, i.e., Claimant's disability would run from September 23, 1982 to approximately October 23, 1982.

The record contains no evidence Claimant was physically disabled or otherwise incapacitated so as to prevent his attendance at the hearing set for September 17, 1982. The Claimant by letter dated September 17, 1982, did acknowledge and verify that he would be able to attend the investigation if it were held on September 28, 1982. The conflict between Claimant's letter and that of his physician is not explained, and the Board finds no evidence in the record of his disability of September 17, 1982.

The fact that Claimant's wife notified the Carrier of his inability to work his scheduled shift does not constitute compliance with Rule 15 under the facts of this case. Carrier's foreman testified that although he was notified, he informed Claimant's wife that he could not give Claimant "permission to be off." Claimant was clearly without proper authority to absent himself from duty in violation of Rule 15.

The evidence of record demonstrates that Carrier met its burden of proof that Claimant used alcoholic beverages while subject to duty. Carrier is correct in suggesting that Claimant should have made arrangements for time off if he chose to imbibe in alcoholic beverages in honor of his birthday at a time when he would be subject to duty. Testimony by Carrier's witnesses established that Claimant admitted he had used alcohol, and as a result Claimant was not in a condition to report for duty as scheduled.

Alcoholic beverages, and the safe and efficient operation of the nation's railroads are entirely incompatible. Claimant was well aware of this fact, and he did not report for duty because he knew he could not perform his job in the manner expected of him.

Claimant's record of discipline assessed reveals a discharge and reinstatement for consumption of alcoholic beverages while on duty. However, this discipline was assessed more than ten (10) years prior to the present charge before this Board. The probative value of Claimant's prior discipline unsupported by specific facts and circumstances, Claimant's otherwise clear record and the facts and circumstances of this case do not justify the ultimate industrial penalty of discharge.

Claimant should be aware that use of alcohol is a matter which this Board considers with utmost seriousness. The removal of Claimant from Carrier's service for almost two and one-half (2-1/2) years will be the last warning Claimant shall receive for behavior involving drugs or alcohol.


The Carrier is ordered to reinstate Claimant to service, with seniority rights unimpaired, but without back pay or other benefits.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1985.