

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current Agreement, the Consolidated Rail Corporation (Conrail) unjustly dismissed Crane Director R. A. Rockwell from service effective November 18, 1982.
2. That accordingly the Consolidated Rail Corporation (Conrail) be ordered to restore Crane Director R. A. Rockwell to service with seniority unimpaired and with all pay due him from the first day he was held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge 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.

The Claimant has been employed by the Carrier as a Crane Director at its Juniata Locomotive Shop in Altoona, Pennsylvania. The Claimant's length of service has been approximately four (4) years. Following a trial that was held on October 28, 1982, the Claimant was dismissed from service for having committed the following offenses on October 14, 1982: 1) Violation of Safety Rule 4010 because he "reported for duty on third trick *** while under the influence of alcohol"; and 2) "Threatening a Conrail Supervisor with bodily harm ***."

The record discloses that on October 14, 1982 Foreman Russ was notified by the "2nd street gate" that an "employee entered the gate and seemed to be in a staggering condition". Foreman Russ proceeded to 17 track D. Bay and together with Foreman Decoskey and Committeeman Kumpf, where they noticed that the Claimant had an unsteady gait, "his eyes were glassy", and his speech was slurred. The Claimant was taken to Foreman Coso's office, where Foreman Coso informed the Claimant that "he was being taken out of service and that he could receive further instructions by mail. Committeeman Kumpf and Foreman Russ left Foreman Coso's office so that they could walk with the Claimant to the 2nd street gate. As the three (3) of them were leaving the office the Claimant was extremely upset and repeated several times within hearing of Foreman Coso that he would "kill that mother f---r." The Board infers that the threat by the Claimant was directed at Foreman Coso.

The Claimant admitted he reported for work on October 18, 1982 while under the influence of alcohol. However, the Board believes that were it not for the influence of alcohol, the Claimant would not have made the threatening remark directed at Foreman Coso. This conclusion has been reached because of the unblemished record of the Claimant during the four (4) years he has been employed by the Carrier. Indeed, the Supervisors indicated at the trial that the Claimant was a good employee and had a positive attitude towards work.

Although the Grievant's conduct on October 18, 1982 was extremely serious and certainly cannot be condoned, it was also a dramatic and unexpected departure from his normal behavior.

At the trial, Local Chairman Giasante stated that the Claimant was "presently enrolled in a D & A program". Bearing in mind, the responsibility of the Carrier to protect its employees, the public and its property from having a person on its premises under the influence of alcohol, when balanced against the unusual conduct of the Claimant on October 18, 1982, the Board recommends the following:

1. The Claimant must successfully complete an alcoholic treatment program approved by the Carrier; proof of such completion will be submitted to the Carrier's Medical Director.
2. The Claimant will furnish whatever documentation is necessary for the Carrier's Medical Director to properly evaluate his condition.
3. The Claimant will submit to a medical and/or psychiatric examinations which the Carrier's Medical Director may deem necessary to properly evaluate his condition.

4. The Claimant's return to service will be contingent solely upon the favorable recommendation of the Carrier's Medical Director, following his evaluation of all medical and/or psychiatric records which he considers to be relevant to his determination.

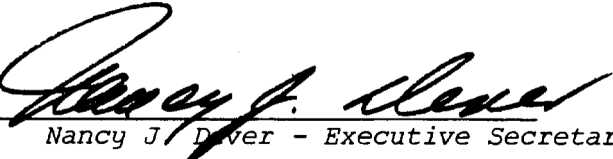
If the Claimant is returned to service, it shall be without pay.

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 4th day of September 1985.