

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (Houston Belt and Terminal Railroad Company

Dispute: Claim of Employees:

1. That the Houston Belt and Terminal Railroad Company violated Rule 29 of the controlling Agreement when they unjustly withheld Carman C. E. Klodginski from service from July 8, 1983 to July 21, 1983, pending formal investigation.
2. That the Houston Belt and Terminal Railroad Company be ordered to compensate Carman C. E. Klodginski for all wages lost from July 8, 1983 to July 21, 1983.

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, Carman C. E. Klodginski, has been employed at the Carrier's Houston, Texas, operation for thirty-four years.

On July 8, 1983, after his shift, the Claimant was advised that he was being withheld from service pending formal investigation to develop facts regarding his being on company property under the influence of and/or in possession of intoxicants on July 7, 1983.

While recognizing that Rule 29 of the controlling Agreement allows suspension pending investigation in proper cases, it is the Organization's position that this was not a proper case under Rule 29 for withholding the Claimant from service for the following reasons:

1. The Claimant had an unblemished work record for over thirty-four years;
2. The alleged incident occurred on the Claimant's rest time, not during working hours;
3. The Claimant was allowed to work ten hours on the date following the alleged incident; and
4. The Carrier's only witness never spoke with the Claimant on the date of the alleged incident.

Additionally, the Organization argues that Rule G, which rule relates to the use of alcoholic beverages and other intoxicants, was changed on February 18, 1983, to include a prohibition of intoxicants on company property without regard to whether or not the employee was on duty. The Organization argues that this change occurred without notice to the employees' representatives and, therefore, should not be suddenly enforced.

Prior to February 18, 1983, the rule stated:

The use of intoxicants or narcotics is prohibited. Possession of intoxicants or narcotics while on duty is prohibited.

Rule G was changed on February 18, 1983, to read:

The use of alcoholic beverages, intoxicants, drugs, narcotics, marijuana or controlled substances by employees subject to duty, when on duty or on company property is prohibited.

Employees must not report for duty, or be on company property under the influence of or use while on duty or have in their possession while on company property, any drug, alcoholic beverage, intoxicant, narcotic, marijuana, medication, or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety.

The Carrier's position is that this was a proper case under Rule 29 for withholding the Claimant from service pending the hearing since the violation of Rule G--Mechanical Bulletin No. 32 is one of the most serious rule violations on the railroad.

Rule 29 states:

No employee shall be disciplined without a fair hearing by designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee will be apprised of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal.

The Carrier cites numerous awards to support its right to withhold an employee from service when he is charged with a serious offense.

This Board has reviewed all of the evidence and supporting documents in this case, and it finds that the Carrier had substantial reason to withhold the Claimant from service pending a hearing. There is no question that possession of intoxicants on the property is the type of "proper case" which is envisioned by Rule 29. (See Second Division Awards 7396, 3828, and 7321.) If an employee is charged with possessing intoxicants on the property, the Carrier certainly has grounds to withhold him from service prior to a hearing.

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 30th day of October 1985.