

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(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, arbitrarily and capriciously dismissed Carman C. E. Klodginski July 21, 1983 for alleged violation of Bulletin No. 32.
2. That the Houston Belt and Terminal Railroad Company be ordered to compensate Carman C. E. Klodginski for for (sic) all wages lost account of their violation of his rights under Rule 29, including loss of all overtime.

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 by the Carrier, Houston Belt and Terminal Railroad Company, for over thirty-four years.

Based upon the testimony of E. G. DeLeon, Special Agent for the Carrier, the Claimant was dismissed from service on July 21, 1983, following an investigation at which he was found guilty of being under the influence of and possession of intoxicants on company property at approximately 9:45 p.m. on July 7, 1983, in violation of HB&T Mechanical Employees' Bulletin No. 32. The Claimant was returned to service on February 15, 1984, and the time off was considered a lengthy suspension.

Bulletin No. 32 reads:

To All Concerned: The use of alcoholic beverages, intoxicants, drugs, narcotics, marijuana or controlled substances by employees subject to duty, while 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.

It is undisputed the Claimant was on the property on the date and time alleged. However, the Claimant denies being in possession of or under the influence of intoxicants.

The Organization's position is fourfold. First they argue that the Carrier changed the rules arbitrarily and illegally. This argument is based upon the fact that Bulletin No. 32 was amended on February 18, 1983. The Organization contends that under the old Rule G, the Claimant could not have been disciplined for his activity on the date in question as he was on his rest hour.

The Bulletin No. 32 that went into effect on February 18, 1983, changed the Carrier's Rule G which had previously stated:

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

The Organization claims that this new rule was put into effect without proper notice to the employees and without following the proper provisions of the Railway Labor Act.

The Organization's second contention is that the Carrier did not hold a fair and impartial investigation as two interrogating officers were used, and the Claimant was made to testify first at his own investigation.

Thirdly, the Organization contends that the Carrier failed to prove the charge against the Claimant with substantial evidence.

Finally, the Organization argues that the discipline was not assessed based upon the facts developed at the investigation.

The Carrier's position is that the transcript of the investigation clearly supports the charges and the discipline assessed the Claimant. The Carrier contends that its Special Agent approached two men standing next to a car and passing a bottle between them. The officer was unable to apprehend the Claimant but did stop the other man who was intoxicated and in possession of an alcoholic beverage. Moreover, the Claimant admitted to being on the Carrier's property with the intoxicated other party on the date and time in question. Finally, the Carrier argues that if the Claimant was doing nothing wrong, why did he flee the area when the officer approached.

This Board has reviewed all of the evidence and testimony in this case, and it finds that there is substantial evidence that the Claimant was involved in the wrongdoing as charged. He admitted that he was on the property at the time and location where the other employee was clearly drinking an alcoholic beverage, intoxicated, and passing the bottle to the Claimant. The Claimant fled upon the approach of the officer.

Moreover, it is clear that the Claimant was aware of the change in the rule, and that it was against the rules for the Claimant to be in possession of intoxicants on the company property. Consequently, the procedural objections regarding improper notice and institution of the new rule are without merit.

Since this Board does not determine credibility, on the basis of the record before us, there is substantial evidence to reasonably conclude that the employee was guilty of the offense charged.

Although the Claimant was originally terminated, the Carrier reduced that termination to a seven-month suspension based upon his previous long record of service. Hence, the Carrier took into consideration the thirty-four years of seniority of the Claimant and reduced the penalty accordingly. This Board does not see any reason to disturb the Carrier's action in this case. The man was found guilty of a serious offense, and his discipline was substantially reduced by the Carrier taking into consideration his long service.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1985.