

The Second Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and Aerospace
(Workers
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

- 1. That under the current agreement the Burlington Northern Railroad wrongfully dismissed Machinist A. G. Lopez effective October 8, 1985.
- 2. That, accordingly, the Burlington Northern Railroad reinstate Machinist A. G. Lopez to service with seniority rights unimpaired and all other rights and privileges restored and compensate Machinist Lopez for all wages as a result of his dismissal including time withheld from service pending investigation.

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 employees 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 was employed as a Machinist. The Claimant was dismissed from service with the Carrier on October 8, 1985 for allegedly violating Rules 565 and 566 (consuming alcoholic beverages when subject to duty and reporting for duty under the influence of alcoholic beverages).

The Claimant has appealed his dismissal, in part, on the ground that he was not provided a fair, just and impartial hearing because of the multiple roles fulfilled by the Hearing Officer.

Numerous decisions by this Board, Boards of other Divisions and various Public Law Boards provide no uniform conclusions concerning the multiplicity of roles. A majority of those decisions do not find prejudicial action simply because the Hearing Officer fulfilled multiple roles. Correctly, in our judgment, the Boards have commonly looked at the specific relationships between those roles and the conduct of the investigative hearing. A careful reading of the record of this case indicates no adverse or detrimental relationships. There is no evidence that the Hearing Officer's multiplicity of roles denied any element of due process to the Claimant.

Moving to the substance of the charges against the Claimant, the Organization contends that there is not adequate and substantial evidence of record to support the charges against the Claimant. We reach a contrary conclusion. The Claimant admits to drinking beer between 6 and 9 P.M. prior to reporting for work at 11 P.M. Additionally, he testified that he withdrew his consent to take a blood test because:

"... I knew that they were going to find the liquor, the beers I had drank before..."


The Claimant's foreman detected the smell of alcoholic beverages, and the Special Agent also detected the smell of alcohol emanating from the Claimant. Under close examination, the Special Agent noticed that, "...his eyes were quite glassy and bloodshot and his pupils seemed to be quite dilated in a brightly lit office area...." There is substantial evidence in the record from which to conclude that the Claimant consumed alcohol shortly before reporting for work and that he reported for duty under the influence of alcohol.

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 15th day of June 1988.