

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11530
Docket No. 11481
88-2-87-2-152

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
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(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Atchison, Topeka and Santa Fe Railway Company violated Rule 40 of the controlling Agreement when they arbitrarily dismissed Sheet Metal Workers S. J. Meives from service on July 16, 1986, following investigation held on July 3, 1986, Argentine, Kansas.

2. That accordingly, the Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Sheet Metal Workers Meives for all time lost beginning July 17, 1986, and for all other benefits which may be lost beginning with the date of July 17, 1986, and continuing until he is restored to service with seniority rights and all other rights unimpaired.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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, a pipefitter with nine years of service, was dismissed by Carrier following an Investigation on charges that he violated Rules 2, 6 and 16 when on duty on June 11, 1986. Rule 2 requires that employees be conversant with and obey all Company Rules. Rule 6 prohibits the use of alcohol, intoxicants, narcotics and other controlled substances by an employee subject to duty or while on Company property. Rule 6 also prohibits employees from reporting for duty while under the influence of any alcoholic beverage, narcotic or controlled substance, or medication, which may affect alertness, coordination, reaction, response or safety. Rule 16 exhorts employees not to be careless, indifferent to duty, insubordinate, dishonest, etc., and requires their conduct be in a manner that will not bring discredit to the company.

The evidence in the Investigation transcript indicates that Claimant's schedule starting time was 4:00 PM. About three and a half or four hours after starting work on June 11, 1986, his Foreman detected an odor of alcohol on his breath. Two other Shop Supervisors were called to the scene and they too detected alcoholic odors on Claimant's breath. Claimant denied that he had been drinking on the job but did admit that he had consumed alcohol sometime earlier in the day when he was fishing.

Claimant was immediately removed from service and while he was being escorted off the property he discussed taking a blood test with his Foreman. He was told that one could be scheduled by the Carrier, that it would have to be done immediately and if the results indicated that he had even a low level of alcohol in his system he would be considered in violation of Company Rules. He did not avail himself of the opportunity to participate in a Carrier administered blood test at that time.

Later that evening, at about 10:10 PM, Claimant appeared at a local emergency room and voluntarily submitted to an alcohol blood test. The result obtained from this test were certified to indicate mg/dl (.009%) alcohol within his system at the time the sample was taken. Based on these facts, including the result of the blood test which Claimant submitted in his defense at the Investigation, Carrier determined that a violation of its Rules occurred.

Claimant contends that the slight amount of alcohol, as disclosed by his private test, was well below established legal intoxication levels, thus he was not impaired at the time and could otherwise perform his job safely.

This argument is fallacious for two reasons. To be considered as being in violation of Carrier Rule 6 one need not have blood alcohol levels meeting or exceeding those considered to establish one to be legally intoxicated. Secondly, Claimant did not submit to the blood test until approximately six hours after his reporting time. One generally accepted study on the rate at which alcohol leaves the blood concludes that the average rate of decline (the burn rate) is 18.9 mg/dl per hour. Other studies report rates slightly slower and some slightly faster with chronic users appearing to be in the faster category. In any event, no matter what reasonable "burn rate" is used, a blood alcohol reading of .009 mg/dl six hours after reporting for duty would place Claimant at or near the threshold of legal intoxication at the time he reported for duty, assuming, of course, that he had not consumed any alcohol on the job.

Accordingly, on this record we find that Carrier developed adequate evidence in Claimant's hearing to support the charges placed against him. This evidence has not been rebutted by Claimant and discipline was warranted. On the level of discipline imposed, we note that Claimant is not a stranger in this area. In his nine years of employment with Carrier he has been assessed demerits on five separate occasions and has served two suspensions, one of which was for possession of alcohol and marijuana while on duty. Additionally,

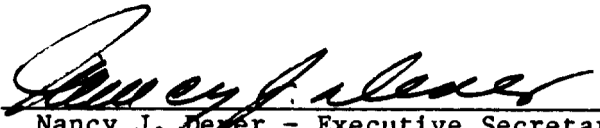
Claimant's attendance is less than regular. In fact it is almost that of a part time employee. In the year and half immediately preceding this latest instance of misconduct Claimant only averaged slightly over three days work per week.

In these circumstances, an established violation of Carrier Rules and a poor discipline and employment record, permanent termination is not inappropriate. The Claim of the Organization will be denied.

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 3rd day of August 1988.