

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That the Carrier violated Rule 26h of the current agreement dated December 1, 1985, when they unjustly dismissed from service Mr. R. C. Jones after an investigation.
2. That the Carrier be ordered to restore Mr. Jones to service and make him whole for all wages, benefits, vacation and seniority rights unimpaired.
3. That the discipline be removed from his service 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 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, an electrician at the Carrier's Council Bluffs Diesel Shop, was employed by the Carrier for approximately eight years. As a result of notice dated May 1, 1986, investigation held on May 22, 1986 and letter dated June 4, 1986, Claimant was dismissed from service for violation of Carrier Rule G.

On April 30, 1986, Claimant began work at 4:00 p.m. The Assistant Enginehouse Foreman gave Claimant his assignment for the day. He testified that he noticed Claimant had what he considered to be glassy eyes and abnormal facial features. Further, he detected an odor of alcohol on Claimant's breath. Approximately five minutes later, after consulting with his superior, the Foreman observed Claimant for between ten and fifteen minutes while Claimant was working. He concluded that Claimant's coordination was distorted, his voice was abnormal and Claimant needed to brace himself on the control stand of the locomotive while standing up. During this observation, the Foreman again detected alcohol on Claimant's breath.

Commencing shortly after 5:00 p.m., the Inspector of Police and the Special Agent interviewed Claimant and conducted a sobriety test which included finger-to-nose, line walking and coin pick-up examinations. Claimant's dexterity was considered passing. However, both detected alcohol on Claimant's breath. According to the Inspector of Police, Claimant stated that he drank seven beers two nights prior to the incident (six beers according to Claimant) and five beers on the previous night. Claimant told the officers that on the previous night he stopped drinking at 5:00 a.m. Upon questioning, Claimant told the Inspector of Police that he did drink quite a bit, especially on his days off. The Special Agent testified that Claimant stated that after he got off work the previous night he "drank for 3 or 4 or 5 hours." Although initially agreeing to do so, Claimant declined to take a blood alcohol or urine test. According to the Inspector of Police, when first asked to submit to such testing, Claimant stated that he did not think a test was necessary since he did have a small amount in his system. The Inspector of Police attempted to convince Claimant to take the test. He testified:

"...I requested, after various discussions if it would be to his advantage for Mr. Jones to take the test to get the degree of alcohol, that I thought that if he had quit at 5:00 in the morning that it would be out of his blood at this time. Mr. Jones made a statement to me, 'I don't really think it is,' I said can you feel it and Jones said, 'just slightly'."

Claimant admits that he was drinking on the two nights prior to the incident. Claimant denies drinking after 5:00 a.m. on April 30, 1986 and asserts that on that date he was able to perform his duties in a normal manner. When questioned about his admission to the Inspector of Police concerning feeling alcohol in his system, Claimant testified as follows:

"Q Mr. Jones part of Mr. Kunze [sic] testimony centered around a question during his interview with you relative to the alcohol being in your blood, and I believe your response was that you could feel, you could feel that it was there? Would you care to elaborate on that?

A I was getting a little bit nervous and ready to get out of there, it had been after a quite a while when he asked that - I was getting feed [sic] up with it - I don't know how long it takes for it to wear off.

* * *

Q Did you state to Mr. Kunze or to Mr. Clark a specific reason why you did not want to take a blood test?

A I don't believe so.

Q Was there some doubt in your mind as to the outcome of the blood test?

A I don't think - yeah there was because of the two nights before - yes."

In pertinent part, Rule G states:

"Employees subject to call for duty, reporting for duty, on duty or on Company property are prohibited from using or being under the influence of alcoholic beverages or intoxicants. Possession of alcoholic beverages or intoxicants is prohibited while on duty or on Company property."

Substantial evidence exists in the record to support the Carrier's conclusion that Claimant violated Rule G. Various Carrier witnesses all detected the odor of alcohol on Claimant's breath. Claimant admitted that he was drinking on the two nights prior to the incident and at the time of his interview with the Police Officers, Claimant stated that he still felt the alcohol in his system.

The Organization's arguments do not change the result. First, in light of Claimant's statement that he could still feel the alcohol in his system, the fact that Claimant passed the dexterity tests given by the police officers does not negate the Rule G violation. Rule G is broadly worded and an employee who admittedly still feels alcohol in his system has fallen within the prohibitions of the Rule. Second, Second Division Award 7187 cited by the Organization is distinguishable since in that case there were no admissions of the kind made by Claimant herein. Third, the fact that the conversation between Claimant and the police officers was tape recorded allegedly without Claimant's knowledge cannot result in a sustaining award in this case. Although a summary of the recording was received in evidence, the recording itself or a transcript made from the recording was not made part of the record. While such recordings have been found to be admissible (See Third Division Award 26365), giving the Organization the benefit of the doubt that such a recording was improper (an issue we need not address), through the testimony of the Enginehouse Foreman and Claimant's admissions in his testimony, we nevertheless find sufficient independent evidence in the record that meets the Carrier's substantial evidence burden.

Based on the above, we are unable to say that dismissal was either arbitrary or capricious.

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 31st day of August 1988.