

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(Illinois Central Railroad

STATEMENT OF CLAIM:

1. That the Illinois Central Railroad violated the current and controlling Agreement between the International Association of Machinists and the Illinois Central Railroad dated April 1, 1935, as subsequently revised and amended, when it harshly and unjustly disciplined (suspended from service on May 5, 1989, pending an investigation and dismissed on June 5, 1989), Machinist James R. Cross for alleged possession and use of an intoxicant while on or subject to duty and on Company property.

2. That the Illinois Central Railroad reinstate Machinist James R. Cross to service, make him whole for any and all losses incurred as result of the investigation conducted on May 18, 1989, and clear his service record of all reference to the incident.

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 was regularly assigned as a machinist with assigned hours from 3:00 P.M. to 11:00 P.M. At about 4:10 P.M. on May 5, 1989, the Mechanical Foreman questioned Claimant about some work he had done. When Claimant answered, the Mechanical Foreman noticed his speech was slurred and when he tried to get up he lost his balance. The Mechanical Foreman got closer to Claimant and smelled an odor on his breath, like alcohol. When the Mechanical Foreman notified the General Foreman about Claimant's behavior they were requested to appear in the General Foreman's office. Upon observing Claimant,

the General Foreman decided Claimant should go to the hospital. While at the hospital, the Claimant agreed to a blood alcohol test. After returning from the hospital a Special Agent was called. After arrival at the General Foreman's office the Special Agent interviewed Claimant. During the interview the Special Agent detected the odor of an alcoholic beverage about Claimant's body. He also detected a faint odor of an alcoholic beverage from Claimant's breath. The Special Agent noted Claimant was unsteady on his feet when submitting to a field sobriety test. The Special Agent asked Claimant to submit to a breathalyzer test, however, Claimant refused to take the test. At this time Claimant was notified that he was being removed from service. While escorting Claimant, the Special Agent asked and received his consent to search his vehicle. While searching the vehicle the Special Agent came upon a Vodka bottle containing a small amount of clear liquid substance. Upon opening the bottle the Special Agent detected the odor of an alcoholic beverage.

The results of the blood alcohol test showed a .384 level. In Illinois an individual with a level of .10 is considered intoxicated.

A formal Investigation was held on May 18, 1989, to determine whether or not Claimant, on May 5, used an intoxicant while on or subject to duty and on company property; and whether he was in possession of an intoxicant while on duty and on company property. Claimant was notified on June 5, 1989, that he was found guilty of the charges and his services were terminated.

The Organization argues that Rule 38, the Discipline Rule, was violated. However, no specifics are given as to how the Carrier violated the Rule.

The Organization argues that because Claimant completed some work before being confronted by the Mechanical Foreman that his condition must have been okay. The fact that Claimant may somehow have completed some work does not take away from the fact that his speech was slurred and he had trouble maintaining his balance when the Mechanical Foreman came upon him.

The Organization argues that the blood alcohol test is improperly in the record because Claimant contends he did not sign the necessary waiver form approving the test. The waiver form contains Claimant's signature which was witnessed by the Mechanical Foreman. Because of the condition Claimant was in when he went to the hospital we find no merit to this argument.

The Organization argues that the doctor, who examined Claimant should have been present at the Investigation because other factors of his examination were not normal and these factors could have accounted for his behavior. We do not agree with this argument because the "other" factors related to Claimant's pulse rate and his blood sugar count. The fact these results may have been abnormal does not detract from the fact that Claimant's blood alcohol test showed a .384 level. The "other" factors also would not account for the fact that three officers of the Carrier detected what they thought to be alcohol on Claimant's breath.

We have reviewed the transcript of the Investigation and find that it was conducted in a fair and impartial manner. At the Investigation it was developed that two Foremen noticed that Claimant's speech was slurred, that he had a hard time maintaining his balance, and that they detected what they thought to be the odor of alcohol on his breath. A Special Agent detected the odor of alcohol on Claimant's breath and about his body. He observed that Claimant was unsteady on his feet when taking a field sobriety test. Claimant's blood alcohol test showed a .384 level. No argument was raised that the test results were not valid or incorrect or that they were not those of the Claimant.

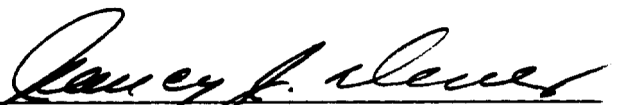
We believe sufficient probative evidence was introduced at the Investigation to support Carrier's finding that Claimant was guilty of violating Carrier's Alcohol Policy. Having been disciplined twice before for violating Carrier policy relating to alcohol we find no reason to disturb the discipline assessed in this case.

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 25th day of July 1990.