

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  
( Detroit and Mackinac Railway Company

STATEMENT OF CLAIM:

1. The Detroit & Mackinac Railway Company arbitrarily and capriciously suspended Machinist Lee Bechtol from service for a period of thirty (30) days beginning December 28, 1990.

2. Accordingly, Machinist Lee Bechtol should have his record cleared and be compensated for all monies and benefits lost as a result of his unjust suspension.

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.

The Claimant was employed by the Carrier as a Machinist and on November 28, 1990, was part of a Maintenance of Way crew. The crew stopped to eat lunch at a bar-restaurant, known as the Rainbow Gardens. About 2:30 P.M. Carrier's Receptionist/Telephone Operator at Tawas City received a telephone call from an individual stating that the crew was drunk and disorderly. Before arrangements could be made to get Carrier officials out to Rainbow Gardens individual crew members began to arrive at Tawas City. The Vice President-Operations met one of the machine operators and requested him to come into the lunch room for a discussion of the incident. After the meeting Claimant followed the Vice President into his office and advised him he was also present at Rainbow Gardens. In answer to the Vice President's question Claimant said he had not been drinking.

Under date of November 29, 1990, the entire crew was sent a notice to attend an Investigation on December 5, 1990, reading in part, as follows:

"CHARGES:

That on November 28, 1990 you consumed or observed consumption of alcoholic beverages while on company time and thereafter operated track machinery to Tawas from National City, MI. Also that you were abusive, vulgar and insubordinate in your actions and speech.

RULES ALLEGEDLY VIOLATED:

Violation of Timetable No. 113, dated May 6, 1984, Operating Rules and General Regulations. General Rules Section 'E', Rule 'B', Rule 'G', Rule 'I' and Rule 'K'."

Following the Investigation the Claimant was notified he was found guilty of violating Rules B and E. Rules B and E read, as follows:

"Rule 'B': Employees must be conversant and obey the rules and special instructions and if in doubt as to their meaning, the employee must apply to proper authorities for an explanation."

Rule 'E': Employees must under any assistance in their power to carry out the rules and special instructions and must properly report any violations to the proper authorities."

It is the Carrier's position that because the Claimant was present at Rainbow Gardens he must have observed a violation of Rule G (prohibits use of intoxicants by employees while on duty) and misconduct by one of the machine operators and did not call in the problem (as required by Rules B and E).

It is the Employee's position that no credible evidence or testimony was introduced at the Investigation to support a finding of guilt. That no witness testified about the machine operator's confrontation with the waitress at Rainbow Gardens which allegedly occurred at lunch time (at a time when Claimant was present).

We have carefully reviewed the Investigation testimony and cannot find any evidence or any witness' testimony whatsoever proving that the Claimant was at the Rainbow Gardens at the time of the confrontation or the consumption of alcohol. The mere fact that the Claimant ate his lunch at the Rainbow Gardens is not sufficient proof that he observed a violation of Rule G and failed to report it as required by Rule E.

In First Division Award 20471 Referee Anrod held:

"It is firmly settled in the law of labor relations that, in discipline cases, the burden of proof squarely rests upon the employer convincingly to demonstrate that an employe is guilty of the offense upon which his disciplinary penalty is based. Mere suspicion is insufficient to take the place of such proof. This principle is so well established and so universally accepted in the industrial relations world as to require no detailed discussion."

It is our conclusion that the charges against the Claimant were not proven, therefore, the discipline shall be removed from Claimant's record and he shall be compensated for any wage loss in accordance with Rule 32.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1992.