

Award No. 1252
Docket No. 1177
2-CSS&SB-CM-'48

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

**CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD,
an Indiana corporation**

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Carman George W. Sydow was unjustly discharged, and that accordingly the carrier be ordered to reinstate him to all service rights with compensation for all time lost since 12:45 P. M. April 11, 1945.

EMPLOYEES' STATEMENT OF FACTS: George W. Sydow entered the service of the carrier in November, 1926, and on April 11, 1945, his regularly assigned hours were from 6:45 A. M. to 2:45 P. M., at Gary, Indiana.

Carman Sydow reported for duty at the beginning of his regular shift on April 11, 1945, and worked until about 12:45 P. M., at which time he was suspended from service pending a hearing on charge of being on duty under the influence of intoxicants.

The hearing was held April 12, 1945, following which Carman Sydow was dismissed from service of the carrier.

This dispute has been handled as provided in the controlling agreement up to and including the highest designated carrier officer to whom such matters may be appealed. More than one attempt has been made to effectuate a settlement of this dispute with such officer, and on each occasion, ending with August 26, 1947, he has declined to adjust it.

The carrier has declined joining the employes in submitting this dispute to the Board.

The agreement dated effective January 16, 1940 is controlling.

POSITION OF EMPLOYEES: Carman George W. Sydow, hereinafter referred to as the claimant, reported for duty at the starting time of his regularly assigned shift on the morning of April 11, 1945, and immediately set about performing his regular duties. At about 12:45 P. M., Master Mechanic Merle Aldrich approached the claimant in regard to vacation schedules and other matters in which the claimant, as a committeeman of the carman, was usually consulted, and while in this conversation told the claimant to start getting ready to go home because he was under the influence of liquor and was in no condition to work.

(p) Said Exhibit A was completed within a reasonable time after the time at which the investigation was had and within a reasonable time after the typewritten report of said investigation of April 12, 1945, said Exhibit A, was completed, a copy thereof was furnished to the said George Sydow or his duly authorized representative in the premises.

3. POSITION OF CARRIER:

(a) The South Shore's position is that the said George Sydow was lawfully suspended and discharged for and on account of the facts and reasons hereinabove set forth, which facts and reasons are fully supported by said Exhibit A.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

As to the merits of the carrier's charge, the evidence establishes that claimant was unable to perform his duties because of the condition he was in, and claimant, in effect, admitted that his condition was due to the effects of drinking too much intoxicating liquors the day and night immediately preceding his reporting for duty at 6:45 A. M. on April 11, 1945. This condition so affected his ability to work that he was directed to go home by Master Mechanic Merle Aldrich. This was about 1:10 P. M. on that day, claimant's regular assignment ending at 2:45 P. M. The record sustains the charges.

The System Federation contends the claimant did not have a fair hearing because the issues involved arose out of his being sent home by Merle Aldrich, master mechanic, who preferred the charges, conducted the hearing, offered statements in support of the charge, rendered the decision, and imposed the sentence. While it would be better to always have some officer of the carrier, other than the party who prefers the charges or makes statements or offers his evidence in support thereof, preside at the hearing, render a decision and impose sentence, however, the agreement makes no such requirement. Therefore, whether it can be said that a fair hearing has not been had is a question of fact in each case. When, as here, the party against whom the charge is made in effect admits the truth thereof, then no harm has been done and it cannot be said that he did not have a fair hearing within the provisions of Rule 29 of the parties' agreement.

The System Federation further contends that carrier did not comply with those provisions in Rule 29 of their agreement which required that claimant, a reasonable time prior to the hearing, be apprised of the precise charges against him and given a reasonable opportunity to secure the presence of necessary witnesses, and because thereof, a fair hearing was not had within the contemplation of the rule. These provisions are, of course, for the protection of the employes covered by the agreement and generally the record should show that they have been reasonably complied with. But where, as here, the party appears at the hearing it will be presumed that he had adequately been informed of the time and place thereof. Further, when the party involved is a committeeman who either knew or ought to have known his rights appears at the hearing and makes no objection that he has not been informed of the precise charges against him nor motion for continuance so he may have opportunity to secure the presence of necessary witnesses and prepare for the hearing, but proceeds with the hearing on its merits, offers evidence, and takes his chances on the outcome thereof, then, after he has been found guilty of the charges against him, it will be presumed that these requirements were adequately complied with and he will not be permitted to complain thereof, because, by his conduct, he has waived his right to object.

In view of the nature of claimants' work, and the responsibility thereof in relation to both the carrier's property and the public in general, we do not think the sentence imposed, under the facts disclosed by the record, is excessive.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1948.