

Award No. 1868

Docket No. 1750

2-SP(PL)-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (Carmen)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement Upgraded Carman Ralph S. Wilson was unjustly dismissed from the service on March 21st, 1953, and that, accordingly, the Carrier be ordered to reinstate him in the service with all rights unimpaired and with compensation for all time lost retroactive to the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: Ralph S. Wilson, hereinafter referred to as the claimant, was employed on November 29, 1949, in the freight car department at Sacramento General Shops, California, by the Southern Pacific Company (Pacific Lines), hereinafter called the carrier, and subsequently the claimant was upgraded on June 27, 1950 to the position of a carman whose regular assignment of hours was from 7:00 A. M. to 3:30 P. M. with a lunch period of thirty minutes, Mondays through Fridays, with rest days Saturday and Sunday.

On February 16, 1953, the carrier's Mr. H. J. Hitke, general foreman of the freight car department, made the election to summon the claimant to stand trial-hearing at 10:00 A. M. on February 18, 1953, on the charges contained in the copy of letter addressed to the claimant by Mr. Hitke, submitted herewith and identified as Exhibit A.

The hearing was held as scheduled and a copy of the transcript thereof is submitted, identified as Exhibit B. However, on March 16, 1953, the carrier's Mr. H. G. Vance, superintendent of shops, made the election to dismiss the claimant from the service of the carrier, which is affirmed by the copy of letter to the claimant by Mr. Vance, submitted herewith and identified as Exhibit C.

This dispute has been handled up to and with "the highest officer so designated by the Company," with the result that he has declined to adjust it.

The agreement of April 16, 1942, as it has been subsequently amended, is controlling.

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 respectfully 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.

On February 16, 1953 carrier charged freight carman Ralph S. Wilson with violation of Rule G (intoxication) and Rule 810 (remaining at post while on duty) of carrier's General Rules and Regulations. Said violations were alleged to have occurred on February 11, 1953. Pursuant to subsequent formal investigation on the property Mr. Wilson was dismissed from the service on basis of carrier's finding he had violated Rule G on February 11.

Claimant first entered carrier's service in October 1941 and resigned in September 1945. In December 1945 he returned to carrier's employe and resigned again in February 1947. In November 1949 he resumed service with carrier and remained until the discharge here in dispute.

Rule G, which is one of carrier's unilateral regulations, reads:

"The use of intoxicants or narcotics by employes subject to duty is forbidden. Being under the influence of intoxicants or narcotics while on duty, or their use or possession while on duty, is sufficient cause for dismissal."

The record shows claimant received a fair and impartial hearing. There is some conflict in the testimony adduced thereat, but the weight of the evidence indicates Claimant Wilson was intoxicated while on duty, and was unfit for work. We find the evidence supports the charge of violation of Rule G. We also find that claimant had knowledge of said Rule.

As we have seen, this Rule declares that intoxication while on duty is sufficient cause for dismissal. Thus having found that Rule G was violated, we are without authority to modify the penalty here imposed unless we determine that the Rule itself is defective. But we cannot so find. Carrier is entitled to adopt and enforce reasonable regulations governing the service of its employes so long as these regulations do not conflict with the collective agreement and are not otherwise illegal. Rule G cannot be deemed unenforceable on either of these grounds nor do we find that the Rule is arbitrary or unreasonable. It follows that in applying Rule G to the instant case carrier was not arbitrary, capricious, or guilty of bad faith.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1955.