

Award No. 1896

Docket No. 1800-I

2-L&N-I-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

ARTHUR C. ELAM (Coach Cleaner)

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEE: Mr. Arthur C. (A. C.) Elam, formerly coach cleaner, Corbin Shops, Corbin, Kentucky, says that he was wrongfully discharged October 11th, 1950, charged wrongfully with violation of Rule (G). Mr. Elam says he was sick not under the influence of any intoxicants. Off on sick leave by permission of Mr. John O. Rose, M.M. Corbin Shops, Corbin, Kentucky, and he request that he be reinstated with all his seniority rights restored and his name be placed upon coach cleaner Roster, and that he be reimbursed for all monetary losses sustained by this wrongful discharge.

EMPLOYEES' STATEMENT OF FACTS: Mr. Elam says that he was formerly employed as coach cleaner in the Corbin Shops, Corbin, Kentucky, and that he was wrongfully discharged October 11, 1950, wrongfully charged with violation of Rule (G). Mr. Elam says on September 27, 1950, just before the arrival of passenger train No. 29, he entered the passenger station, at Corbin, Kentucky, a public place. Upon arrival of said passenger train, he boarded the passenger coach, an old style coach with poor ventilation, that his girl friend was to meet him on this train and accompany him to Woodbine, Ky., the coach being very hot on a hot afternoon and he had previously taken several aspirin tablets, had a part of box in his pocket, and for reason unknown to him, he just merely passed out, and that he was not under the influence of any intoxicants of any kind, had not even taken drink. No physician ever called to try to find out the condition on Mr. Elam.

Mr. Elam says he passed completely out, does not remember anything that happened after he passed out, first thing he remembers was the next morning he woke up or gained consciousness and was in Corbin City jail. Did not know how long he had been in jail or anything that had happened since he passed out. That no physician was ever called and nothing ever done to try to find out about his condition.

Mr. Elam says an investigation was held by Mr. John O. Rose, M.M. at Corbin, Kentucky, October 4, 1950. That he was present, that Mr. Rose, Mr. Webb and Mr. Williams, the L & N police or patrolmen were witnesses, also, Mr. G. G. Chappelle. Mr. Chappelle was at that time chairman of the local union, and according to the rules and regulations of the Railroad Company it was necessary for this union man to be present at this investigation. Mr. Elam was not in good standing with the union at that time, had been dropped for non-payment of dues. In other words, Mr. Elam had quit the union and

and that evidence not so introduced shall not be considered by the Board. (See First Division Awards 13604, 13844 and 14445.)

This claim should be dismissed for want of jurisdiction. As pointed out hereinbefore, the provisions of the agreement have not been followed. The duly authorized committee has not appealed the claim; the time limit has expired; and, as this Division has held in similar previous decisions, it has no alternative except to dismiss the claim for want of authority to hear and determine it upon the merits.

However, should the Board assume jurisdiction to hear and determine this claim upon its merits, carrier insists that the claim should be denied. The dismissal of Elam was not capricious; neither was it arbitrary, unreasonable nor unjust. It was not in violation of any provision of the current agreement. On the other hand, dismissal of Elam was fully warranted. He had been given every reasonable opportunity to correct or overcome the condition that finally resulted in his dismissal, but he simply would not heed the warnings that were given him. The carrier submits that in line with the principles adhered to by this Board the claim in its entirety should be denied.

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.

The parties to said dispute waived right of appearance at hearing thereon.

The record discloses that this dispute was not handled on the property in accordance with the grievance procedures outlined in Rule 31 of the controlling agreement and Section 3, First (i), of the Railway Labor Act. Therefore, this Division is without jurisdiction. (See Second Division Award 1852 and others cited therein.)

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March, 1955.