

Award No. 2199
Docket No. 1935
2-AT&SF-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Electrical Workers)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current applicable Agreement the Carrier, without just cause, assessed Mechanical Department Electrical Worker, Electrician John Emmerich 30 demerits against his personal record.

2. That accordingly, the Carrier be ordered to remove said 30 demerits from the personal record of Mechanical Department Electrical Worker, Electrician John Emmerich, making his personal record clean.

EMPLOYEES' STATEMENT OF FACTS: It is submitted that the hearing transcript reflects the following testimony on Page 6:

Mr. Luke questioning Mr. Emmerich:

"Q. Where did you first meet Mr. Patun?

A. I do not know the track number but it was either track 23 or 24.

Q. Was it on some track in the west hold yard?

A. Yes.

Q. What was he doing there?

A. He was sitting there on the steps and had his head in his hands. He said he did not feel good and I told him to stand up but he sagged to his knees.

Q. The first thing you did was to escort him to a mail car, is that right?

to and a follow-up of the Patun incident, which was briefly explained at pages 2 and 3 of the carrier's statement of facts. While it was proven that Patun was intoxicated, Mr. Emmerich in his testimony at the hearing, as well as his testimony in the instant dispute, never admitted that Patun smelled of alcoholics, much less that he was intoxicated; this in view of the fact that the testimony of several reliable witnesses was to the effect that Patun not only smelled of alcoholics but obviously was under the influence of liquor and in no condition to perform his duties. In the handling of the Patun case, the carrier was subject to some rather rank and embarrassing accusations from the organization, which will not be mentioned here but will only say that after a more thorough and extensive investigation by the organization the carrier was fully and completely exonerated of the alleged mishandling, as will be noted after reading General Chairman McLennan's letter to the carrier's general manager, Mr. J. N. Landreth, dated May 11, 1955. Further, it is not quite understandable, in view of the organization's final findings in the Patun case as expressed by the general chairman in his letter identified as carrier's Exhibit C, why the organization did not withdraw their objections in the Emmerich dispute.

The purpose of carrier's exhibit C is to show the Board the complete reversal of attitude and position taken by the organization in the Patun incident, and to prove to the Board, regardless of the claimant's testimony that he was motivated by a sincere desire to assist a sick man, he obviously knew Patun's condition but due to apparent ulterior motives on his part he chose to handle the situation as he did which, without question, was in violation of Rules Nos. 6 and 20 of Form 2626. It will be noted in the investigation notes that the claimant specifically stated he was fully familiar with Rules 6 and 20, therefore, since it has been proven beyond a doubt that Mr. Emmerich violated the rules, the carrier firmly believes the discipline should stand as assessed.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant was regularly assigned as an electrician 7:30 A. M. to 3:30 P. M., Wednesday through Sunday. On Sunday, July 18, 1954, claimant and Electrician J. G. Patun were found in a mail car. Patun was evidently intoxicated and claimant was giving him first aid. Patun was subsequently dismissed from the service for intoxication and claimant was given thirty (30) demerits for being away from his assigned tour of duty during working hours. The organization contends that the thirty (30) demerits imposed on claimant were unjust.

The record shows that claimant was observed by two (2) Assistant Division Special Agents assisting Patun. Claimant was found in a mail car applying ice and a cold towel to Patun's head. For the purposes of this dispute, Patun was intoxicated, completely helpless and clearly in need of assistance. Claimant was rendering the assistance that he could to get him out of the condition he was in. He was charged with absenting himself from duty in violation of Rule 20 of carrier's unilateral general rules. We do not think that claimant was guilty of this charge. An employee who helps another employee who is incapacitated for any cause is not an employee absent from duty within the meaning of this rule. A fellow employee has a duty to protect a stricken employee even if he is intoxicated. Certainly no carrier desires fellow employees to stand by while an intoxicated employee subjects himself to injury.

We think the admitted evidence clears claimant of the charge made against him.

Carrier asserts, however, the claimant was attempting to conceal from the carrier the violation of the rules on the part of Patun. The difficulty with this contention is that claimant was not charged with failure to report a violation under Rule 6 of its General Rules. Under Rule 33(e) an employee must be apprised of the charge against him. He may not be charged with one offense and be found guilty of another.

The carrier failed to sustain the charge made against this claimant and an affirmative award is in order.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1956.