

**Award No. 3249**

**Docket No. 2990**

**2-SOU-CM-'59**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Roscoe G. Hornbeck when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**SOUTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current Agreement Carman E. E. Boatman was unjustly suspended November 21, 1957, and discharged from the Carrier's service November 22, 1957.

2. That accordingly the Carrier be ordered to restore the aforementioned Carman to service with unimpaired service rights and compensate him for all time lost since November 21, 1957.

**EMPLOYEES' STATEMENT OF FACTS:** Carman E. E. Boatman, hereinafter referred to as the claimant, formerly employed by the carrier at Hayne Shop, Spartanburg, South Carolina, was notified November 21, 1957 he was suspended from service, and charged with conduct unbecoming an employee. Copy submitted herewith and marked Exhibit A.

Formal investigation was held November 22, 1957, copy submitted and identified as Exhibit B. On the same day, November 22, 1957, the claimant was notified he was found guilty as charged and was hereby discharged from the service. Copy submitted and identified as Exhibit C.

This case has been handled with the carrier's officers, designated to handle such matters, in compliance with current agreement, all of whom have refused or declined to settle the dispute.

The agreement effective March 1, 1926, as subsequently amended is controlling.

**POSITION OF EMPLOYEES:** It is submitted there are no provisions in the current agreement giving the carrier the right to direct or supervise

Mr. Boatman, having been dismissed for just and sufficient cause, and not having any contract right to re-employment, the Board cannot do other than deny the claim which the brotherhood here attempts to assert.

**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.

Parties to said dispute were given due notice of hearing thereon.

Employes claim that Carman Boatman was unjustly suspended November 21, 1957, and discharged from the carrier's service November 22, 1957, and ask that he be restored to his employment and paid for time lost by reason of his dismissal.

The formal written charge against Boatman is conduct unbecoming an employe of the Southern Railway, "inasmuch as you were arrested for drunken driving on July 19, 1957".

We note at this juncture that we would have a different and more difficult question if Boatman had been charged and investigation held under a rule common to some of the agreements which provide:

"That at a reasonable time prior to the hearing, such employe and the duly authorized committee will be apprised (in writing) of the **precise charge \* \* \***".

The written charge here does not state an offense.

But the investigation and hearing under consideration did not take place until after Boatman had been tried, convicted and sentenced on the charge of July 19, 1957.

Boatman was present at this hearing, with representatives, was fully aware that the charge and hearing then included his conviction and sentence on the arrest of July 19, 1957, and later that other offenses of which he had been convicted were also under consideration. None of these developments was unknown to Boatman. He was fully apprised and given opportunity to testify which he declined to do.

Boatman's sentence on the offense of July 17, 1957, in one aspect, was to the penitentiary, a felony, but he was finally put on probation upon ten conditions.

Subsequent to the hearing, but brought to Boatman's attention, it was shown that prior to the charge and conviction of July 19, 1957, he had been convicted and sentenced as follows:

Eight times for disorderly conduct

Seven times for being drunk

Two times for driving while under the influence of intoxicating liquor

Two times for investigation, one of which was dismissed, the other was changed to loitering of which he was convicted

One time for hit and run driving

One driving an automobile while intoxicated is a potential murderer. The criminal codes of most of the States define such a killing as manslaughter.

The record also strongly suggests that Boatman is an habitual drunkard. His conduct indicates that he not only is unfit morally but probably incapable physically to properly meet the requirements of his employment.

Although stated in negative form, Rule 34, of the controlling agreement inferentially supports a dismissal of an employe of the carrier for just and sufficient cause after preliminary investigation and hearing.

Rule G of the carrier, of which it must be presumed Boatman had knowledge and which it was his obligation to obey, provides:

"The use of intoxicants by employes on duty is prohibited. The habitual use, or the frequenting of places where they are sold, is sufficient cause for dismissal."

This is a reasonable rule and does not conflict with any rules of the agreement between Boatman's organization and this carrier.

By the foregoing rules and upon the inherent right of the carrier to discharge an employe whom it has properly found to be unfit to continue in its employ, it does not appear that the claim of the employes is substantiated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1959.

#### DISSENT OF LABOR MEMBERS TO AWARD NO. 3249

The majority's findings are based on emotion rather than pertinent facts. The governing agreement provisions are likewise ignored. The discharge of an employe for intoxication in a place and manner wholly unrelated to the business of the carrier, and not in any way directly affecting the carrier, cannot justifiably be sustained. If the carrier could discharge a man for such a reason the employment and seniority rights might be reduced to a nullity whenever the carrier saw fit to exercise its power of discharge arbitrar-

ily. Consideration of a case submitted to this Board is supposed to be limited to the rules of the agreement and their application to the facts in the case as submitted in the docket. The majority has based its findings on an incident which occurred while the employe was off the property of the carrier—an incident shown to be within the jurisdiction of the Criminal Court. By such findings the majority has upheld the carrier in negating one of the conditions set forth by the court when it placed the claimant on probation; namely the condition that he work faithfully at suitable employment.

Furthermore the following Rule G of Carrier's Book of Operating Rules as quoted by the majority in the findings is not the current one but is, according to the carrier's own statement, the one that was in effect in 1899:

"The use of intoxicants by employes on duty is prohibited. The habitual use, or the frequenting of places where they are sold, is sufficient cause for dismissal."

Current Rule G reads as follows:

"The use of intoxicants . . . at any time is detrimental to good service and is cause for discipline. Employes who indulge in the use of an intoxicant . . . WHILE ON DUTY, or WHO REPORT FOR DUTY WHILE UNDER THE INFLUENCE OF . . . will be dismissed."

There is no evidence that the claimant used intoxicants while on duty or that he reported for duty while under the influence of intoxicants. The dominant factor in this case is, did the claimant violate any rule of the governing agreement. It is shown that he did not. In the absence of such a showing the Board should have held that the carrier violated Rule 34 when it dismissed the claimant without just and sufficient cause.

**James B. Zink**

**R. W. Blake**

**Charles E. Goodlin**

**T. E. Losey**

**Edward W. Wiesner**