

Award No. 4226
Docket No. 3951
2-CNO&TP-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

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

**THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman L. B. Shell was unjustly suspended from the service May 28, 1960 and subsequently unjustly discharged from the service June 8, 1960.

2. That accordingly the Carrier be ordered to reinstate the aforesaid named employe to the service with all seniority, vacation, free transportation and employment rights unimpaired and compensate him for all time lost account the aforesaid unjust treatment.

EMPLOYEES' STATEMENT OF FACTS: Carman L. B. Shell, hereinafter referred to as the claimant, was employed by the Southern Railway System (The Cincinnati, New Orleans & Texas Pacific Ry. Co.), hereinafter referred to as the carrier, at Chattanooga, Tennessee in the year 1920 and remained in the service of the carrier continuously until June 8, 1960 when he was unjustly discharged by the carrier from its service.

On the afternoon and evening of May 28, 1960 claimant while working his regular assignment on the hump in carrier's Chattanooga yards as a peg shooter, suffered an attack of Menieres Disease (Vertigo) at approximately 7:00 P.M. The attack caused claimant to become unsteady on his feet making it dangerous for him to continue his work. Claimant therefore, temporarily left his job and walked over to the section shanty, took medication and sat down for a few minutes to recover from the attack.

During the brief period claimant was under the attack carrier's general foremen Blackburn and Bullard after receiving a call from the trainmaster

of the claim being without basis and unsupported by the effective agreement, the Board has no alternative but to make a denial award.

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.

The charge was amply proven by the evidence, including the testimony of two foreman who observed claimant's condition, noticed the odor of intoxicants, talked to claimant, and unsuccessfully tried to send him to a doctor for examination. The defense included a doctor's statement that on December 26, 1959, he had seen and treated claimant for vertigo, which caused unsteadiness. There apparently was no further treatment by the doctor, and if the illness still existed at the time of claimant's inability to work on this occasion over five months later, medical evidence could readily have been produced. The hearing was admittedly fair and impartial and the record affords no ground for sustaining the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.