Award No. 4356

Docket No. 4239

2-PRR-MA-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Machinists)

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Machinist W. F. Coleman was unjustly dealt with when he was deprived of his service rights and removed from Service February 15, 1961.

2. That, accordingly, the Carrier be ordered to restore this employe to service with seniority rights unimpaired.

EMPLOYES' STATEMENT OF FACTS: William F. Coleman, hereinafter referred to as the claimant last entered service as a machinist on the Columbus Division on November 2, 1926, and was employed as a machinist on February 15, 1961, by the Pennsylvania Railroad Company, hereinbefore referred to as the carrier, at the carrier's Nelson Road Fueling Station, which is a part of the Buckeye Region, with a tour of duty from 3:00 P. M. to 11:00 P. M., with Thursday and Friday rest days.

At approximately 10:00 P. M., on February 15, 1961, Enginehouse Foreman R. J. Birch verbally notified claimant that he was being taken out of service and sent home pending trial and decision.

On February 16, 1961, carrier's Foreman Birch confirmed his statement of the previous evening in a letter addressed to the claimant, notifying him to appear for trial at St. Clair Enginehouse at 10:00 A. M., Friday, February 24, 1961.

Trial was held on February 24, 1961, at which time claimant was present and was accompanied by Local Chairman Charles L. Phillips and Committeeman W. H. Coleman. No relation.

Form G-32 Notice of Discipline, #2672, dated March 16, 1961 was delivered to Claimant Coleman at his home address 347 Southampton Avenue, Columbus, Ohio, for his signature to certify that he had been notified of discipline imposed in connection with the offense contained in G-32, #2672.

ments were taken. The action of questioning witnesses in behalf of the claimant remained for Committeeman W. H. Coleman to perform and the Carrier submits that Committeeman Coleman was freely permitted to question all witnesses."

The carrier will not burden the record with further comments on this point, save to point out that the joint submission was signed for the employes by Local Chairman C. L. Phillips, and to respectfully suggest that it may give some indication of the validity of the employes' general position in this dispute.

Similarly, carrier asserts no proper basis exists for the employes' inference that claimant's rights were somehow abridged because carrier did not call certain employes as witnesses. The presence of such witnesses is the responsibility of the claimant. He was notified on February 16 to attend trial on February 24 and so had ample time to arrange for the presence of any witnesses he desired. As Referee Wenke succinctly stated in Third Division Award 6067:

"It is also contended that Carrier should have made available at the hearing all the Waiters who were in Dining Car 3614 when the incident occurred involving Claimant and Pullman Conductor R. A. Connery. If the Carrier adduces sufficient evidence to fully determine the facts, that is all that is required of it. If Claimant desires to question any witness the Carrier has not produced the burden rests upon him to call them, as the rules of the parties' Agreement provides he may."

In addition to the foregoing, in their position the employes, while in no way denying that claimant was guilty as charged, contend that the discipline imposed was too severe.

First in this regard, the particular attention of your Honorable Board is directed to the following language quoted from the Second Division Award 3151 (Referee Whiting):

"While there is a conflict in the evidence adduced at the hearing, the evidence of a company police sergeant and two supervisors supports the charge that claimant was under the influence of intoxicants while on duty. Under such circumstances, the carrier's decision that claimant was guilty of the charge may not be disturbed. **Since it appears that claimant had been warned previously about the use of intoxicants while on duty, the penalty is not excessive."** (Emphasis ours.)

The penalty in the case decided by Award 3151 was dismissal.

In the instant case, claimant had also been warned previously about drinking on duty, a fact which he denied at his trial and appeal hearing. It was only after his appeal had been denied that claimant admitted the truth, stating, "I have decided to admit that I was warned by Mr. Birch about drinking on the job."

In view of all of the foregoing, your Honorable Board is respectfully requested to dismiss or deny the claim of the employes in this matter.

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.

There is evidence on the record that while the Claimant was on duty, February 15, 1961, he was observed to be staggering; that his eyes were bloodshot; that he talked incoherently; and that he had the ordor of intoxicating liquor on his breath. It was the expressed opinion of the two witnesses who observed the Claimant that he was intoxicated and unfit for work. Immediately following, a paper bag containing some medicine and a partially filled bottle of whiskey was found on a filing cabinet, where the Claimant customarily performed a part of his duties. He admitted that the medicine was his, but denied all knowledge of the whiskey and that he had been drinking. However, when ordered off the job the Claimant inquired "How about the bottle?", and when told that it would be held as evidence he asked, "How about a drink before I go?"

The Carrier has a General Rule which provides that, "the use of intoxicants by employes available for or while on duty is sufficient cause for dismissal," and the Claimant has admitted in writing that he had been previously warned about drinking on the job.

Whether this case is considered from the point of view of the sufficiency of the charge or notice, the fairness of the hearing, the probative value of the evidence produced, the severity of the penalty imposed, the mitigating circumstances, or as a plea for leniency, there is no valid basis for a sustaining award of any character.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December, 1963.