

Award No. 5522

Docket No. 5407

2-IC-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, E. R. King, Carman Helper, was unjustly suspended from service of the Illinois Central Railroad on January 17, 1966, and unjustly dismissed from service by letter dated February 7, 1966.

2. That accordingly, the Illinois Central Railroad be ordered to reinstate Carman Helper E. R. King to service with accumulated seniority rights unimpaired, compensate claimant for all time lost, vacation rights unimpaired, hospitalization for himself and dependents, and any other rights he might have received had he not been unjustly held from service coming under the Agreement between System Federation No. 99 and the Illinois Central Railroad.

EMPLOYEES' STATEMENT OF FACTS: Carman Helper E. R. King, hereinafter referred to as the Claimant, entered the service of the Illinois Central Railroad, hereinafter referred to as the Carrier, in the year 1952. At the time of the incident giving rise to the instant claim, Claimant was regularly employed by Carrier as a Carman Helper, East St. Louis, Illinois with assigned hours of 3:00 P.M. to 11:00 P.M.

On January 18, 1966, Carrier's Master Mechanic W. H. Weber, addressed the following letter to Claimant:

"Centralia, Illinois
January 18, 1966

Mr. E. R. King
Car Oiler
1232 Illinois Avenue
E. St. Louis, Illinois

It is obvious that either of Mr. King's two grave offenses of intoxication and insubordination constituted a "serious case." An employee who reports for work in a stupor, or curses and assaults a supervisor clearly is not fit for duty after either offense is committed.

In Award 2-4457, Referee McDonald said, in upholding the dismissal of a machinist who reported for work intoxicated and who the union claimed was likewise unjustly suspended pending a hearing:

"Claimant contends that he was unjustly dealt with when he was suspended from service by Carrier on November 12, 1961, and subsequently dismissed from service effective November 22, 1961.

Claimant was given notice, and a hearing was had charging him with failure to properly perform his work due to being under the influence of intoxicants when reporting for duty on November 10, 1961.

We have examined the transcript of the evidence adduced at the hearing, together with the arguments and statements contained in the file of this dispute.

There is substantial evidence to support the charge, the rules were complied with, and we cannot say that Carrier was guilty of any arbitrary action." (Emphasis ours.)

Moreover, in Award 1543, the Division answered the contention that an insubordinate employee was unjustly suspended pending a hearing:

"Claimant was charged with 'using threatening and abusive language toward acting Electrical Foreman E. L. Allcorn, July 13, 1951.' These charges are of such a nature that suspension pending hearing was proper within the meaning of Rule 32 (b) of the parties' effective agreement." (Emphasis ours.)

SUMMARY AND CONCLUSION

The testimony of the witnesses undoubtedly proves that Carman Helper E. R. King was guilty as charged. Mr. King committed two grave offenses by reporting for work intoxicated, and insubordination. Either offense, the Board has held consistently, is grounds for dismissal and obviously serious enough to warrant suspension pending a hearing.

There is not support, therefore, for either of the union's claims that Mr. King was "unjustly" suspended or "unjustly" dismissed.

The company asks the Board to deny the union's claim.

(Exhibits not reproduced.)

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.

Parties to said dispute waived right of appearance at hearing thereon.

In this discipline case petitioner herein was charged by Carrier with being insubordinate and under the influence of intoxicant at 3:00 P.M., January 17, 1966, in the Carrier's building located at the south end of "B" Yard, East St. Louis, Illinois, and, after a hearing, was dismissed from Carrier's service.

The facts as developed at the hearing are that Claimant was scheduled to report to work at 3:00 P.M. on the day in question; however, Employee Tony Tumosa informed General Car Foreman J. E. Noonan that petitioner's mother had told him when he drove by Claimant's home to take him to work that Claimant was sick, and would not be able to work that day; that Carrier then made arrangements to have another employee cover Claimant's assignment; that Claimant appeared for work at approximately 3:00 P.M.; that Claimant used vile and profane language toward his superiors, General Car Foreman Noonan and Gang Foreman N. J. Green, when they refused to permit him to commence work; that Claimant appeared unsteady on his feet, and the odor of intoxicant was on his breath; that when Foreman Noonan blocked the door to the building, for the reason as stated by Mr. Noonan that he did not want Claimant walking through the train yard, a scuffle ensued between Claimant and Foreman Noonan, with the latter receiving a kick from Claimant on the left ankle.

Claimant's defense is that although he did have a couple of beers prior to reporting to work, the beers did not have any effect on him at all, and the reason why he attempted to leave the building at the time Mr. Noonan was blocking his exit was so he could secure witnesses to prove that he was not intoxicated.

Numerous awards of this Board have held that it is our function to pass upon the question whether, without weighing it, there is some substantial evidence in the record to maintain a finding of guilty. In this instance, it is conclusively seen that there was substantial probative evidence presented by Carrier to support the charges assessed against Claimant, and that Claimant was guilty of the charges as charged.

In regard to the penalty of dismissal from service imposed against Claimant, the Organization points out Claimant's 13 years of unsoiled service (a notation in Claimant's record was not raised on the property, and cannot be referred to in the determination of this dispute), and the fact that Claimant was not yet on duty when the insubordination and the state of intoxication of Claimant occurred, thus requiring Claimant to be reinstated on a leniency basis.

Concerning this contention in regard to leniency, we are to be guided by the principle that a penalty cannot be disturbed unless it is clearly shown that the action of the Carrier in imposing said penalty was so unjust, unreasonable or arbitrary, so as to constitute an abuse of discretion. Therefore, we cannot change a penalty on the basis of "leniency" alone.

The fact that the insubordination and state of intoxication occurred immediately prior to Claimant's starting work does not, in our opinion, mitigate the seriousness of the offenses committed by Claimant herein. Carrier has the right to expect its employees to report for work in a sober manner. Safe operation of the railroad of necessity demands such a requirement. The offenses involved herein are of a very serious nature, and, therefore, we cannot say that the penalty imposed upon Claimant herein was so unjust, unreasonable, or arbitrary so as to constitute an abuse of Carrier's discretion in assessing same. Therefore, we must deny this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July, 1968.