



Award No. 5863

Docket No. 5765

2-C&O-CM- 70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A.F. of L.-C.I.O.
(Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That carman-tentative Leslie L. Brown was unjustly dismissed from the service as result of investigation held in office of Manager Heavy Car Shops, C&O-B&O, Raceland Car Shop at 2:00 p.m., Monday, February 12, 1968, the charges were not proven to be true and the discipline administered was excessive.
2. Accordingly Mr. Brown is entitled to be restored to service with seniority rights unimpaired, paid for all time lost and made whole for all benefits accruing to employees in service.

EMPLOYEES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company hereinafter referred to as the carrier owns and operates a large facility at Russell, Kentucky known as the Raceland Car Shops, consisting of heavy repair, where new cars are built, modified and completely rebuilt, where a large number of carmen and carmen-helpers are employed and hold seniority under rule 31 of the shop crafts agreement. Carmen-tentative Leslie L. Brown hereinafter referred to as the claimant was regularly assigned first shift, 7:00 a.m. to 3:30 p.m. workweek Monday through Friday, rest days Saturday and Sunday.

Claimant was notified by letter to report for investigation at 1:30 p.m., Friday, February 9, 1968; charged with responsibility in connection with being under the influence of intoxicants on Chesapeake and Ohio Railway property at approximately 4:20 p.m., February 6, 1968.

At the request of local chairman R. L. Adkins, said investigation was postponed and held in the office of manager heavy car shops, C&O-B&O, Raceland car shop at 2:00 p.m., Monday, February 12, 1968.

As result of said investigation claimant was notified by the carrier that "he had been found at fault in connection with being under the influence of intoxicants on Chesapeake and Ohio Railway Company property at approximately 4:20 p.m., February 6, 1968 and was hereby dismissed from the service of the Chesapeake and Ohio Railway Company."

7, until February 12, the date of the investigation, to which he again replied, "No sir." Claimant Brown is a member of the C&O Railway Employees' Hospital Association and has available to him free medical services and even though the injury was not received on duty, medical service was available to him had he so desired. The failure to avail himself of medical service clearly indicated the lightness with which the injury was treated by Brown and according to his statement, the only effect he had is a pain when he goes over the area with a comb "Or something like that."

As stated in carrier's statement of facts, Raceland Car Shop is a large railway car manufacturing operation and claimant, though off duty, was subjecting himself to a possibility of serious injury and the carrier to unnecessary liability by his being on the property.

The employees have contended that the investigation did not prove the charges against Brown. To the contrary the charges were clearly and conclusively proven. The Employees have not argued that the discipline rendered was unwarranted, arbitrary, or capricious, nor can it be shown that it was. The discipline rendered was in line with discipline rendered in other cases involving intoxication, which, in fact, the employees have not disputed. Review of the handling of the case on the property will indicate that there is no basis for disturbing the discipline as rendered by carrier's officers and as upheld on appeal. The carrier, therefore, urges that the board deny the claim of the employees in its entirety.

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 employees 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 waived right of appearance at hearing thereon.

Claimant was charged with being under the influence of intoxicants while on Carrier's property.

As the result of an investigation which included testimony by various Carrier officers, employees, and Claimant himself, Claimant was dismissed from Carrier's service.

By way of defense the Organization takes the position that "the transcript of the investigation does not prove that Claimant's actions were due to intoxication but very well could have been due to a head injury as described by the employees."

A careful analysis of the record shows that Carrier had proved by a preponderance of the evidence that Claimant was under the influence of alcohol while on Carrier's property. Moreover, there is no contention by the Organization, and no indication in the record that Carrier's action in dismissing Claimant was arbitrary or capricious. Under the circumstances, a dismissal was warranted.

A W A R D

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1970.