



Award No. 5925

Docket No. 5763

2-CB&Q-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 95,
RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO
(CARMEN)**

**CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Chicago, Burlington & Quincy Railroad Company violated the controlling agreement by unjustly suspending from service Mrs. R. L. Hinton, negro Coach Cleaner, 14th Street Passenger Coach Yard, Chicago, Illinois, on the date of December 6, 1967, and by continuing her under suspension since that date.
2. That accordingly, the carrier be required to return Coach Cleaner Hinton to active service and reimburse her for all lost time during her suspension, restoration of all fringe benefits, including vacation, seniority, pass rights, health and welfare premiums, all paid for by Carrier, and compensation for any costs in connection with such benefits incurring during her suspension.

EMPLOYEES STATEMENT OF FACTS: The 14th Street Passenger Coach Yard is located in Chicago, Illinois, and is the Eastern terminal of passenger service operated by the Chicago, Burlington & Quincy Railroad Company, hereinafter called the carrier.

Negro Coach Cleaner, Mrs. R. L. Hinton, hereinafter called the claimant, was first employed by the carrier as a coach cleaner on September 6, 1947.

The claimant was assigned Sunday through Thursday, 8:00 A.M. to 12 Noon and from 12:20 P.M. to 4:00 P.M., with Friday and Saturday as assigned rest days.

On December 6, 1967, the general foreman, Mr. J. D. Krupka, addressed a letter to the claimant, notifying her that her services was being terminated account violation of Rule "G" of the Burlington Lines Code of Safety Rules, at about 1:00 P.M., at 14th Street Passenger Yard, Chicago, Illinois.

On the same date, December 6, 1967, the claimant addressed a letter, to District Master Mechanic J. R. VanNortwick requesting an investigation in accordance with the provisions of the schedule agreement, rule 31.

given more than ample opportunity to straighten out. The carrier had its patience exhausted with Coach Cleaner R. L. Hinton and her drinking problem. When she was dismissed on December 6, 1967, her immediate supervisors recommended that she never be considered for reinstatement. Her miserable record of service with this company and her repeated violation of Rule "G" prompted this recommendation.

When her claim had been appealed to the chief mechanical officer, he declined to reinstate Mrs. Hinton, because of her extremely poor record of service. Repeated requests from the organization, as well as the progression of this case to the Second Division, brought about another review of all of the circumstances. In a telephone conversation on April 1, 1969 the chief mechanical officer and general chairman agreed that Mrs. Hinton would be reinstated strictly on a leniency basis without pay for time lost. Because of her demise on April 10, 1969, that disposition could not be effected.

There can be no finding here that Mrs. R. L. Hinton was unjustly dismissed. The evidence of her guilt of violation of rule "G" was manifest. Her miserable record was taken into consideration in assessing discipline in the form of a dismissal. This was not unjust discipline. Under rule 31 the board is authorized to interfere only—

"If it is found that an employe has been unjustly suspended or dismissed from the service such employe shall be reinstated with his seniority rights unimpaired and be compensated for wage loss if any suffered by him resulting from said suspension or dismissal less any amount earned during such period of suspension or dismissal."

The carrier submits that this is not a case for the application of this Rule. To require a penalty payment possibly in the neighborhood of \$7,700 by the carrier would be a very unjust penalty on this company for assessing just discipline.

In the light of the complete record in this case the board must find that Coach Cleaner R. L. Hinton was properly dismissed from the service for violation of Rule "G" on December 6, 1967. This disciplinary action cannot be set aside.

The claim must be denied.

* * * *

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 waived right of appearance at hearing thereon.

Claimant was dismissed from Carrier's service for violation of Rule "G" which states: "The use of intoxicants or narcotics is prohibited."

A careful examination of the record shows that Carrier had proved by a preponderance of the evidence that Claimant, on the date in question, had consumed intoxicants. There is nothing in the record that Carrier's action was arbitrary or capricious.

A W A R D

Claim is denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this