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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6397
Docket No. 6209
2-L&N-MA-'72

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 91, Railway Employes' Department, A. F. of L. - C. I. O. (Machinists)
(Louisville and Nashville Railroad Company

Dispute: Claim of Employes:

(a) That under the current agreement, Machinist Apprentice D. E. Newman, hereinafter called the Claimant, was unjustly dismissed by the Louisville & Nashville Railroad, hereinafter called the Carrier, on September 19, 1970.

(b) That accordingly, the Carrier be ordered to reinstate the Claimant with his former seniority and all other rights unimpaired and with pay for all time lost since his dismissal on September 19, 1970.

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, a temporarily upgraded machinist apprentice, was suspended from service on September 19, 1970, pending investigation and subsequently discharged on October 26, 1970. He had been charged with being under the influence of intoxicants and falling asleep during the early morning hours of September 19, 1970, while he was supposed to be performing his assigned duties.

In our recent Award 6196 (Quinn) we summarized the criteria we apply when reviewing the record before us in matters involving disciplining of employees who are covered by Controlling Agreements requiring a determination that action taken was just. In it we stated:

> "This Board does not presume to substitute its judgment for that of a Carrier and reverse or modify Carrier's disciplinary decision unless the Carrier is shown to have acted in an unreasonable,

arbitrary, capricious, or discriminatory manner, amounting to abuse of discretion. A carrier's disciplinary decision is unreasonable, arbitrary, capricious or discriminatory when the Carrier does not apply and enforce the rules with reasonable uniformity for all employes; when rule violation by an accused employe is not established by substantial evidence;...or when the degree of discipline is not reasonably related to the seriousness of the proven offense. In judging the above, mindful that the Carrier has the burden of proving its charge and of showing its conduct and decision were not unreasonable, the Board will not go beyond the record developed at the Carrier's investigation."

With these standards before us, we examined the record herein. We are not satisfied that the main and most significant charge against the claimant was supported by substantial evidence.

The foreman who came into close proximity with the claimant on two occassions within the first hour after his arrival at work did not find him in a disabling condition due to having admittedly inbibed in a glass of beer prior to reporting for work. He permitted claimant to commence working. Shortly thereafter, he personally treated claimant for a job incurred injury to one of his fingers. Again, he found nothing untoward in claimant's condition and sent him back to work. More than an hour later, he and another supervisor allegedly detected strong evidence of alcohol on claimant's breath. While we recognize that it is most difficult to establish with unchallengable certainty the condition which we have regularly held to be a punishable offense, we cannot find that this record meets the reasonable requirements we have laid down for dealing with these matters.

Furthermore, the hearing officer and Carrier officials to whom Petitioner appealed completely disregarded the mitigating circumstances for claimant's conduct following his suffering an injury to his hand. It was perfectly feasible that claimant felt ill and nauseated from the pain incurred. He showed poor judgement in not returning to the office and requesting to be relieved from duty and instead sat down and dozed off. We find that in weighing all of the circumstances, a discharge was an excessive penalty and the Carrier should have heeded Petitioner's plea for a lesser punishment.

A W A R D

a) That part of claim marked (a) in submission is sustained.

b) That part of claim marked (b) in submission is sustained except that claimant shall receive no pay for time lost and shall have only rights and benefits of an employee who had been furloughed without pay for the period September 19, 1970 to the date of his recall to work pursuant hereto.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October, 1972.