

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

Parties to Dispute: ( Archie Kingsland, Petitioner  
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(  
( Burlington Northern, Inc.

Dispute: Claim of Petitioner:

Petitioner, ARCHIE KINGSLAND, contends that he has been improperly and wrongfully discharged from his employment by the Burlington Northern, Inc. That he was unjustly disciplined and he requests that he be reinstated with his seniority rights, and that he be compensated for the wage loss suffered by him on account of wrongful discipline and discharge procedure.

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.

The record in this case reveals that the claimant was dismissed from service account being found in violation of Rule "G" of Carrier's Safety Rules when he reported for work under the influence of intoxicants.

A careful review of the transcript of the investigation reveals that Carrier's witnesses all testified to the fact that the claimant reported for work under the influence of intoxicants and nothing was presented by claimant which would discredit this testimony; claimant underwent a sobriety test which conclusively indicated that he was "under the influence"; the transcript shows that claimant did not deny that he had been drinking prior to coming on duty; his answer to the question whether he had been drinking prior to coming on duty being "That I don't believe is any of the railroad's business".....

Since the record clearly indicates that claimant was guilty as charged then Carrier's action in dismissing him was proper. Violations of Rule "G" are dismissible offenses - See Third Division Awards 1848, 2457, 3184, 3829, 9863; Second Division Awards 1476, 1868, 3151, 4226, 5925 and 6535.

In addition to the foregoing Carrier stated in the record:

"On several occasions prior to September 27, 1972, local supervision had sent the claimant home when he reported for work because he was under the influence of intoxicants.. He was warned that his actions constituted a violation of Rule G of the Burlington Northern Safety Rules and if he continued such activities, it would be necessary to take formal disciplinary action."

This statement was made in Carrier's initial submission and since the claimant's representative did not challenge it or attempt to prove it to be in error (claimant's representative did not file a rebuttal statement) it must stand uncontroverted and factual. See First Division Awards 22 230, 22 231, 19 808 and Third Division Awards 19849 (Roadley), 19927 (Lieberman).

We will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of May, 1974.