

The Second Division consisted of the regular members and in addition Referee Louis Yagoda when award was rendered.

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Southern Pacific Transportation Company
((Pacific Lines)

Dispute: Claim of Employees:

1. That under the current agreement Car Inspector Garfield Jelks, hereinafter referred to as the Claimant, was unjustly deprived of his service rights and compensation when he was improperly discharged from service under date of April 17, 1972, after twelve (12) years service with the Carrier.
2. That the Carrier be ordered to:
 - (a) Restore the aforementioned Claimant to service with all service and seniority rights unimpaired, and be ordered to compensate Claimant for all time lost retroactive to April 1, 1972, when he was removed from service pending hearing and subsequently dismissed on April 17, 1972.
 - (b) Grant to the Claimant all vacation rights.
 - (c) Assume and pay all premiums for hospital, surgical and medical benefits, including all costs for life insurance.
 - (d) Pay into the Railroad Retirement Fund maximum amount that is required to be paid an active employee, for all time he is held out of service.

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.

Testimony of Car Foreman is not refuted that he was unable to secure radio response from Claimant on April 1, 1972 when latter was on paid duty as car inspector. Nor is his testimony disputed that he then found Claimant asleep in the local yard man's shanty and that he was unable to arouse him from sleep in spite of shaking him and attempting to lift him out of the seat by both shoulders. Foreman's further testimony is that he then called Assistant Trainmaster and then both thereafter encountered Claimant in Car Foreman's shanty. He describes Claimant's eyes as glassy, speech incoherent and appearance "not good".

Assistant Trainmaster's testimony is that in this same encounter he observed Claimant's eyes to be glassy, speech slurred and to emit a heavy smell of "intoxicants". Both witnesses testify that Assistant Trainmaster asked Claimant how long it had been since he had had a drink; he responded that he had had a drink of wine with his wife about four hours ago.

Both witnesses testified that Claimant was instructed to wait in the Carmen's shanty; he was later found in the Switchmen's register room changing his clothes and was again requested to remain there so that he could be escorted off the property; he agreed to wait but disappeared soon thereafter.

In his own testimony, Claimant admitted being asleep but denied that he was under the influence of intoxicants. He denied also stating that he had drunk wine prior to coming on duty. He further stated that he had gone to the Switchmen's shanty because he had become ill and that he left after being asked to stay because he had in the meantime (while in the Foreman's office) informed the Car Foreman that he was sick and asked permission to go home.

Claimant presented witnesses on his behalf as follows: Car Inspector who stated that he worked same tour as Claimant on date in question, saw Claimant just before latter went on duty and he seemed to be normal to him in all respects "but he looked a little bit he could have been sick"; another Car Inspector who said he saw Claimant about an hour and one-half before the incident took place, stood about 12 inches from him, and smelled no intoxicating liquor; a Carman who stated that he worked with Claimant for a short period at the beginning of their shift and stated that he appeared and acted normal in all respects except that when they encountered each other, at one point, Claimant stated that he was "sick at his stomach" and would have to go home.

In spite of the partially countervailing testimony presented on behalf of Claimant, the record indicates that Carrier acted on material and substantial probative grounds in concluding that evidence supported finding of Rule G. violation.

Claimant's long record of service (12 years) is counter-balanced by unrefuted record of previous adverse incidents and, on the whole record, Carrier acted within entitled discretion in applying the dismissal penalty.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of July, 1974.

