

The Second Division consisted of the regular members and in addition Referee C. Robert Roadley when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. Freight Car Inspector Frank Ligety was unjustly suspended from service on May 12, 1975.
2. Freight Car Inspector Frank Ligety was erroneously charged with being in violation of Rule G of the General Regulations and Safety Rules.
3. That the Chicago and North Western Transportation Company be ordered to reinstate Mr. Ligety for all time lost at eight hours per day, with seniority unimpaired, plus any other benefits he would be entitled to as per Rule 35.

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, on April 2, 1975, was notified to appear for investigation on the following charge:

"Your responsibility for being in violation of Rule G of the General Regulations and Safety Rules, and for being in possession of a loaded pistol on company property at the Wood Street Terminal at about 9:00 P.M., Thursday, March 27, 1975."

The investigation was originally scheduled for April 7, 1975 but was postponed until April 29, 1975 at the request of the claimant. The record shows that the reason for the postponement was to ascertain the disposition of criminal charges against the claimant, involving the same incident subject of the claim, which were dismissed by the court on April 25, 1975 account failure by the state to prove ownership of tool box in question in this case.

Rule G states, in pertinent part, as follows:

".....Being under the influence of alcoholic beverages or narcotics while on duty or on Company property is prohibited. The use or possession of alcoholic beverages or narcotics while on duty or on Company property is prohibited." (emphasis added)

Rule 19 of the General Regulations and Safety Rules provides:

"19. Employees are prohibited from having loaded or unloaded firearms in their possession while on duty except those employees authorized to do so in the performance of their duties or those given special permission by the Superintendent."

Petitioner bases his plea for a sustaining award on two premises; (1) the carrier failed to meet the burden of proof because neither the vehicle the drugs or the pistol were the property of the claimant, and (2) the court charges against claimant were dismissed. However, certain facts of record are unrefuted.

1. Claimant was driving the questioned vehicle during the entire period involved in this matter and, according to the transcript, had been driving it all night;
2. The drugs and pistol were in the open, the drugs being on the dashboard of the vehicle in front of the driver and the pistol being in the top of an open tool box between the driver's seat and the front passenger seat.
3. The claimant was on company property at the time of his apprehension while driving the subject vehicle.

Petitioner is apparently attempting to show that since claimant did not own the vehicle he was, therefore, not in possession of its contents and, secondly, that the dismissal of the criminal charges in court precludes a finding by the carrier that any Agreement rules and/or company regulations had been violated.

Concerning the matter of the relationship between the action of a court of law and the investigation of an alleged violation of a contract provision, the Second Division stated in part, in Award 6619, as follows:

"Furthermore, the investigation is a civil proceeding while the criminal charge is an offense against society as prescribed by a statute or ordinance. A determination of one does not necessarily offset the other. An investigation is a proceeding prescribed by a contract. It has nothing whatsoever to do with a violation of a criminal code. The question to be determined at the investigation was whether or not the claimants violated a contract or operating rule in connection with their employment." (emphasis added)

Also, see Second Division Awards 5681 and 6983 and Fourth Division Award 3278.

Regarding the matter of being in possession of the subject drugs and pistol it is noted that Webster's Dictionary defines "Possession" as:

"The act of having or taking into control; control or occupancy of property without regard to ownership."

Referee Moore, in First Division Award 22294, stated in this regard as follows:

"The Board notes that 'having possession' includes having under one's control. This means in one's home, in one's automobile or any other place where the claimant would have control over the articles in question."

Based upon a thorough review of the record before us it is clear that claimant received a fair and impartial investigation, that the findings of the carrier were supported by substantial evidence and that under the circumstances in this case the discipline assessed was not too severe. We will therefore deny the claim in its entirety.

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 4th day of March, 1977.