

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 1, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That the Carrier dismissed Electrician Richard A. Mangus and removed him from service on July 10, 1975.
2. That, accordingly, the Carrier be ordered to restore him to service with all seniority rights unimpaired and with pay for all time lost retroactive to aforesaid date.

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 employed as an electrician at Carrier's M. of W. Repair Shop at Canton, Ohio. On July 2, 1975, he was observed "acting in a strange manner" and was interviewed by the Shop Superintendent in the presence of witnesses including the Shop Committeeman. As a result of the interview, claimant was asked to take and voluntarily submitted to a blood alcohol test, the results of which showed him to be under the influence of alcohol. Following the completion of a formal investigation on the charge:

"Being in an unfit condition to perform your duty as Electrician at approximately 8:25 AM, July 2, 1975, Violation of Safety Rule 3002 (a) (b) (c)."

claimant was dismissed from service.

From our review of the record in this case we are convinced that petitioner's contentions relative to claimant not being afforded a fair and impartial trial have no basis in fact. Both claimant and his representative had ample opportunity to present any testimony they desired. They accepted without objection the several statements which were made part of the record. They had opportunity to and did cross examine any of the witnesses present. Their contentions in this regard are therefore denied.

From the record it is apparent that claimant had a clear discipline record, a good safety record and, according to his Shop Superintendent, "was an excellent electrician". There is testimony which alludes to two prior instances where claimant was verbally warned about possible use of intoxicants, but no record exists on these encounters.

From the total record in this case, while there is evidence to show that in this instance claimant was indeed in an unfit condition to work on July 2, 1975, it is our opinion that the discipline as imposed by Carrier has served its purpose. We therefore rule that claimant be returned to service with seniority rights unimpaired and the time he has been out of service will be counted as suspension without pay for his dereliction. The claimant must understand, however, that this is his final opportunity to prove that he is indeed "sorry" and that he will correct his improper conduct and live up to his obligation to his employer.

A W A R D

Claim sustained to the extent indicated above.

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 9th day of May, 1978.