

The Second Division consisted of the regular members and in addition Referee Theodore H. O'Brien when award was rendered.

Parties to Dispute: ( System Federation No. 97, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Firemen & Oilers)  
( Atchison, Topeka & Santa Fe Railway Company

Dispute: Claim of Employees:

- (1) That under the current agreement Laborer Harold Price was unjustly dismissed from the service of the Carrier as a result of an investigation held on September 18, 1975 at Galveston, Texas.
- (2) That accordingly the Carrier be ordered to reinstate the Claimant with his seniority, vacation, hospital and insurance rights unimpaired and also that he be additionally compensated at his applicable hourly rate of pay for all time lost retroactive to September 9, 1975 and to continue on the same basis until he is returned to 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 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 Claimant was regularly employed as a Laborer by the Carrier at their Galveston, Texas shops. Claimant was employed on June 1, 1974 at Galveston, Texas, however, he was furloughed on June 11, 1974 and recalled on July 11, 1975. Therefore, he had a combined total of less than ten (10) weeks' service with the Carrier at the time that the instant dispute arose. A formal investigation was held on Thursday, September 18, 1975 to determine the facts in connection with Claimant allegedly being under the influence of intoxicants and asleep while on duty at approximately 10:20 P.M. on September 9, 1975. As a result of the investigation, Claimant was removed from service.

The Organization has progressed the instant claim for the reinstatement of the Claimant with all rights unimpaired and for compensation for all time lost retroactive to September 9, 1975, on the basis that Claimant was unjustly dismissed from Carrier's service as a result of the evidence adduced at the investigation held on September 18, 1975. It is the position of the Employees that the Carrier did not produce the necessary probative evidence needed to substantiate the charges set forth in the investigation.

Based on the record before us, we cannot agree with the position of the Organization. In fact, it is the opinion of this Board that there exists, in the record, substantial evidence of probative value to justify the discipline of dismissal which was imposed on the Claimant following his investigation. The facts brought out at the investigation clearly prove that the Claimant was asleep while on duty and that he was under the influence of intoxicants. The testimony of the General Foreman and the Traveling Car Foreman on duty on the night of the incident at hand, clearly substantiates Carrier's charges that the Claimant was asleep and under the influence of intoxicants while on duty. The General Foreman testified at the investigation as follows:

"... As we walked by this camper I heard someone snoring. I shined my light in the camper and saw (Claimant) asleep. After numerous attempts, (Claimant) was awakened. As he sat up I could smell a heavy odor of alcoholic beverages on his breath."

The Traveling Car Foreman related, at the investigation, what occurred on the night of the incident in dispute, as follows:

"We started looking for him ... and found him in the back of the pickup truck with a camper on it. He was asleep and we finally woke him up. He had been drinking, to my way of thinking, and was pretty intoxicated, the way he talked, acted and smelled."

There is no question that the investigation produced substantial evidence to support Carrier's charge that the Claimant violated Rules 1, 7, 16, 17 and 18 for Form 2626 Standard, General Rules for the Guidance of Employees. It is the opinion of this Board that in view of the severity of the offense and the Claimant's brief period of service, the Carrier's action cannot be said to be unjust, unreasonable or arbitrary. We will not disturb the Carrier's decision to dismiss the Claimant from service. Accordingly, the claim shall be denied.

A W A R D

Claim denied.

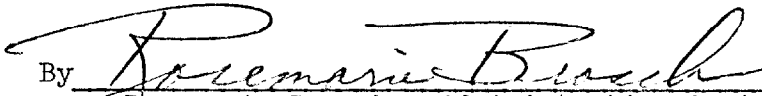
Form 1  
Page 3

Award No. 7533  
Docket No. 7442  
2-AT&SF-FO-'78

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
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Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of May, 1978.