

The Second Division consisted of the regular members and in addition Referee Ralph W. Yarborough when award was rendered.

Parties to Dispute: { System Federation No. 7, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Electrical Workers)
{
{ Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current agreement, Mr. M. F. Dannels, Electrician Wireman, Havre, Montana, was unjustly dismissed from service of the Burlington Northern Inc. on January 30, 1976.
2. That accordingly, the Carrier be ordered to compensate Mr. Dannels for all lost time together with restoration of any lost vacation time, holidays, sick pay or hospitalization benefits and any other rights, privileges, or benefits he may be entitled to under schedules, rules, agreements or law and that the dismissal be removed from his personal record.

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.

Claimant M. F. Dannels was an Electrician Wireman headquartered at the Carrier's facility located in Havre, Montana and residing there, working out of Havre over an extended area, with nine years service for Carrier, Burlington Northern.

On January 28, 1976 Claimant along with his Leading Electrician on the same crew left Great Falls, Montana after having completed their work assignment that day at 4:00 p.m. They were driving the Carrier's truck to their home in Havre, Montana, about 115 miles away. After shopping for clothing in Great Falls, they left Great Falls at 5:30 p.m. and proceeded to Big Sandy en route to Havre. They stopped at Big Sandy, Montana to relax and spend several hours at Butch's Bar, enjoying some drinks, where Claimant testified that he drank two gin and tonics. The Leading Electrician Mr. T. S. Schend, agreed to drive a Bar employee's car home to Havre,

because said bar employee suffered from night blindness, leaving Claimant to drive the company truck on to Havre alone.

At the time this was happening, Claimant was not in a work status, not on duty, and not under pay.

The rules of the company forbid employees to use a company car for personal purposes. However, it had been a practice for employees to return to their homes in company cars, to headquarters city and their residential city, when duty hours were over; thereby no over-time was charged and this saved the company another night's room rent that they would have incurred had they remained overnight at Great Falls. The practice of so using a company truck under these circumstances had been accepted by the company, but not authorized by it.

When Leading Electrician Schend left Big Sandy for Havre, he turned the truck over to Claimant Dannels to drive on to Havre. Carrier's witness S. E. Loeffler, Regional Electrical Supervisor of the extensive Billings, Montana Region of Carrier under whose jurisdiction Employees Schend and Dannels worked, testified that:

"A Leading Electrician is the same responsibility as an Electrician Wireman, except the Leading Electrician is responsible for the work out of his headquarters, and responsible for the tools, the shops, the equipment assigned to that location, as well as to coordinate the work that the other departments have there."

Supervisor Loeffler testified that Schend was the Leading Electrician, that the electrical truck No. 3155 employees were driving that night was Schend's responsibility and by letter order of January 18, 1973, addressed to, among others, employee Schend, clarified the duties of a Leading Electrician as one responsible for all work assigned to respective areas which includes responsibility for material and for trucks located or used out of his headquarters.

Schend testified that at the time in question he was the Leading Electrician at headquarters in Havre, Montana, that the Burlington truck that they were driving was under his responsibility and that Leading Electrician Schend authorized Claimant Dannels to drive the electrical truck alone back from Big Sandy to Havre. At the time of such authorization Leading Electrician Schend further testified that they had drinks at Big Sandy, that Dannels was drinking gin and tonic and that he was drinking rum and squirt, and that Schend knew that Dannels was drinking alcoholic liquors.

Schend testified that at the time in question that Dannels was working under his jurisdiction, as Leading Electrician, and that he did permit the drinking by Dannels of alcoholic beverages while the electrical truck was his responsibility.

While Dannels was driving the truck from Big Sandy to Havre, Montana he was stopped by highway patrolmen, ticketed for driving at 67 m.p.h. when the speed limit was 55 m.p.h., but was not ticketed for driving while intoxicated.

After receiving the ticket for speeding, Dannels drove the truck on en route to Havre, but before reaching home, the truck went off the right side of the road, careened back completely across the highway, flipped over twice, was completely demolished and declared a total loss. Claimant Dannels miraculously came out with a few scratches.

While Dannels was not on duty, not on pay, not on company property, when he was drinking the gin and tonics, he proceeded to enter on company property, the electrical truck, attempted to drive it to Havre and completely wrecked it on the way. He was using company property while using alcoholic beverages and was violating several different company rules against violating traffic laws, using company property while consuming alcohol, and not driving safely. While Dannels contended that the truck was defective in steering and braking which caused the accident, we do not so find. We have read the entire record and all of the prior decisions filed with us by both the representatives of the Claimant as having application. We find that Rule G does have application and that on a number of contentions the Claimant was wrong and admitted as much in his testimony. We find that the matter was serious enough for the Carrier to take severe action on this case. A high percentage of accidents on highways are due to some driver having consumed alcoholic beverages which dull the driving capabilities. When the Carrier's truck is being driven on a public highway under the circumstances under which Claimant was driving, there is a grave danger of innocent persons being killed or maimed and the Carrier in such instance would certainly face strong claims that for permitting the driving of their truck (even though they did not know it) by employees using alcoholic beverages. Had the Claimant been killed it is entirely likely that his family would have filed a claim against the Carrier. The company's truck was utterly destroyed. This is a very serious matter, worthy of severe discipline.

However, there are circumstances in this record that cause us to hold that there has been punishment enough with the removal from service of Claimant from January 30, 1976 to July of 1978 without pay, in the light of the entire record.

Claimant Dannels' record shows that Dannels is "a good worker", gets along well with his fellow employes, is a good electrician. As the Regional Supervisor Loeffler in charge of the Electrical work for the entire Billings area testified, "Dannels has been a good electrician - he has been a journeyman electrician since 1974 - since that time he has proved to be a dependable electrician - a good employe."

In addition to that nine years good record, other circumstances militate against the complete dismissal of the Claimant from service. The Carrier's Leading Electrician in charge of the truck that night, with knowledge that Dannels was consuming alcoholic beverages, put Dannels in charge of the truck with instructions to drive it on from Big Sandy, Montana to Havre, Montana. That Leading Electrician has already had his hearing and appeal, and in Award No. 7508 he has been reinstated with seniority unimpaired, but with no back pay. To reinstate the person who put Dannels in charge of the truck that night, knowing that he was consuming alcoholic beverages, with instructions to drive it on from Big Sandy to Havre in that condition, but to dismiss from service Claimant Dannels, would be a perversion of justice far more grievous than the acts complained of by the Carrier. To give equal treatment under the law compels us to order the reinstatement of Dannels.

The offense is serious. It justifies stern punishment, but the nine years clean record of the Claimant, the fact that his superiors state that he is a good and dependable employe, a good electrician, a good worker, getting along well with his fellow employes, speaks volumes for him, at a period in time when many employes fail to earn such accolades. The Claimant is to be warned that should any occurrence of this type of conduct take place in the future, the Carrier would be amply justified in taking serious disciplinary actions, up to and including discharge. The Claimant should be reinstated, seniority unimpaired, but with no back pay.

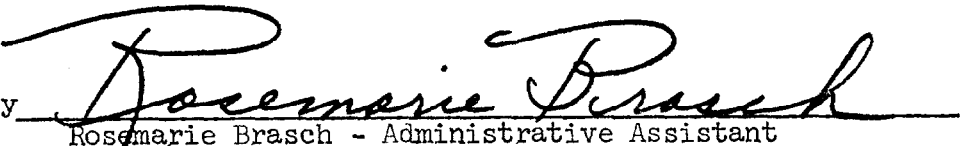
A W A R D

Claim is sustained in accordance with the findings.

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 4th day of August, 1978.