

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 92, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Grand Trunk Western Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement Samuel Green, Laborer, was unjustly dismissed from the service of the Carrier effective August 19, 1976.
2. That accordingly the Carrier be ordered to reinstate Samuel Green with seniority unimpaired, made whole for all wages lost from August 19, 1976, protected for health and welfare rights, Railroad Retirement Benefits, vacation rights, and all other benefits of the agreement be protected from August 19, 1976, date dismissed from 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.

Claimant herein was discharged for violation of Carrier Rule 26(a) which prohibits the use of intoxicants by employees subject to duty or their possession or use while on duty.

Carrier witnesses at the investigation testified that at approximately 4:10 P.M. on August 18, 1976, about an hour after his starting time, Claimant was observed by two supervisors as being unsteady on his feet and having slurred speech. Both witnesses noted the odor of alcohol on Claimant's breath. Upon being asked if he had been drinking on duty, Claimant replied "no"; he gave no response to the question of whether or not he had been drinking prior to coming on duty. The supervisors asked Claimant whether he would go to the hospital and submit to a blood test. He refused to go to the hospital and was sent home.

Claimant steadfastly denied that he was intoxicated and pointed out that he had a known leg condition which accounted for his apparent unsteady gait. He testified that he had been working effectively since starting his shift. It must be noted however, that at no time did Claimant deny that he had used intoxicants.

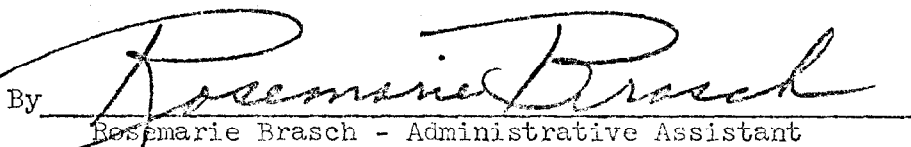
The investigation evidently had sufficient testimony by Carrier officials to warrant Carrier's conclusion that Claimant was indeed intoxicated at the time of the incident. However, a careful examination of the testimony leaves us with a nagging doubt that he possibly may not have been under the influence. Granted that Carrier was justified in some form of discipline, we are inclined to afford Claimant one last opportunity to "fly right", under the circumstances and in light of his eight plus years of service. It should be made abundantly clear to Claimant that further infractions of Company rules on this subject will receive short shrift from all concerned and that this is a last chance. However, under the particular circumstances of this situation, we shall order Claimant's reinstatement without compensation for time lost.

A W A R D

Claim sustained in part; Claimant shall be reinstated without compensation for time lost, but with seniority rights unimpaired.

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 1st day of November, 1978.