

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That under the controlling Agreement, Carrier improperly dismissed Carman L. M. Ruble from the service of the Carrier under letter dated August 31, 1976, after investigation held on August 11, 1976.
2. That accordingly, Carrier be ordered to restore Carman L. M. Ruble to service with vacation and seniority rights unimpaired and be made whole for all losses including compensation.

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 discharged on August 31, 1976, following a hearing, for being under the influence of alcohol and being asleep on duty in the Locker Room. Claimant's duty hours were 11:00 p.m. to 7:00 a.m.

Earlier on the day in question, Claimant had talked to the Yardmaster, reporting that he was sick and was going home. Claimant, nevertheless, remained on the property and was found asleep in the Locker Room several hours later. At the hearing, the General Foreman stated that Claimant had blood-shot eyes and a pronounced odor of alcohol. The General Foreman drove Claimant to a local hospital where a blood sample disclosed an alcohol content in excess of the level specified by the State for a determination of intoxication.

There is some disagreement as to whether Claimant authorized the blood sample. The hospital refused to take the blood sample without a doctor's approval, which was obtained by the General Foreman. The record is somewhat obscure as to whether Claimant was present at the time the doctor's permission was obtained. Claimant alleges that while the discussion was taking place at the hospital regarding authorization to take a blood sample, he went outside and drank whiskey. From the state of the record, it is difficult to determine whether such drinking took place before or after 7:00 a.m., which coincides with the end of Claimant's regular tour of duty.

Carrier introduced Claimant's previous record to support its decision to dismiss Claimant from its service. The record before us does not substantiate Carrier's allegations of Claimant's prior poor work history, which is based largely on hearsay.

Carrier, in our judgment, has not met the burden of properly documenting its case so as to justify dismissing Claimant from its service. The record with respect to Claimant's prior transgressions, if any, is confusing and lacks probative support.

Claimant's conduct on the day in question, however, appears to have been far from exemplary. Especially in this industry, employees must comply rigorously and consistently with prescribed standards of personal behavior and work attitudes and job performance. Employee safety and public safety are paramount considerations in the railroad industry, as is, of course, efficient operations.

Although the record in this case is somewhat confused, it is clear that Claimant's behavior merits censure and some degree of discipline, but not the sanction of discharge. We will direct that Claimant be returned to work without pay for time lost but with the stern warning to Claimant that we consider his conduct as seriously deficient in the attributes of a responsible employee. Claimant is hereby advised that insofar as this Carrier is involved, he is walking his last mile; in other words, this is his last chance. This is to serve as a final warning to Claimant that repetition of the actions and behavior which gave rise to this proceeding will justly put his job in jeopardy. Any further transgressions of the type that led to this case, or failure properly to perform his duty in the future will constitute proper and sufficient cause for discharge. A copy of this Award is to be delivered personally to Claimant as well as being placed in his personnel file.

The decision in this case is not to be deemed nor construed to serve as precedent for cases involving other employees found in similar circumstances; it is applicable only to the instant case.

A W A R D

Claim sustained to the extent specified in Findings.

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Award No. 7759
Docket No. 7687
2-B&O-CM-'78

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 29th day of November, 1978.