

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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

Dispute: Claim of Employee:

1. That under the current agreement Mr. J. C. Ayala, Carman, was unjustly dismissed April 23, 1976, from the service of Burlington Northern Inc. at the 14th Street Passenger Yard, Chicago, Illinois.
2. That accordingly, the Burlington Northern Inc. be ordered to:
 - (a) Compensate Carman J. C. Ayala, Chicago, Illinois all time lost from April 23, 1976 until restored to service.
 - (b) Restore to Claimant all seniority, vacation rights unimpaired; made whole for all health and welfare insurance benefits; made whole for pension benefits including Railroad Retirement and Unemployment Insurance and be made whole for any other benefits that he would have earned during the time he was held out of 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.

Claimant was found guilty, following an investigation held on March 26, 1976, of violating Rules 661 and G of the Burlington Northern Safety Rules for being insubordinate to his foreman and under the influence of alcohol, while on duty and on company property on January 26, 1976.

Accordingly, this Board has carefully reviewed the investigative transcript to insure that claimant was provided a fair and impartial hearing. We do not find, after conducting this examination, that Carrier acted arbitrary, capricious or singularly prejudicial in this proceeding.

We well nigh recognize the inevitable adversarial propensities for viewing differently the hearing transcript, but we do not find the conclusion herein at variance with the facts.

This Board has consistently observed the principle, so eloquently expressed in Second Division Award (2787) that "we are not the triers of the facts. Our duty is to establish only that a fair hearing required by the rules has been given and not to substitute our judgement for those who have had a direct and immediate opportunity to evaluate the witnesses and their evidence." We do not find any justification for deviating from this decisional rule.

Claimant had been adjudged guilty of serious misconduct offense that was fraught with potential dangers. He was discharged for a Rule G violation on April 12, 1965 and then reinstated to service on December 27, 1965. He was again discharged for the same rule violation on August 26, 1970 and again reinstated to service on November 26, 1971. This is his third Rule G violation, which is also joined with insubordination.


Surely under these unique and repetitive circumstances and the compelling safety imperatives of this industry, it would be unwarranted, on our part, to reverse Carrier's disposition. We will deny the claim.

A W A R D

Claim denied.

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 10th day of January, 1979.