

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

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{
{
{ Texas and Pacific Railway Company

Dispute: Claim of Employees:

1. That Machinist J. F. Roach, Jr., was unjustly dismissed from the service of The Texas and Pacific Railway Company on June 18, 1976.
2. That, accordingly, Machinist J. F. Roach, Jr., be reinstated and compensated for all lost time and made whole for all rights and benefits as per the controlling Agreement.

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 dismissed from service for intoxication while on duty on June 14, 1976. His regular hours were 7:30 AM to 3:30 PM. At about 12:55 PM, or some 5½ hours after reporting for work, two Carrier officials testified that they observed symptoms indicative of claimant's being under the influence of intoxicants while he was on duty. Claimant was taken in a company vehicle to a clinic for a blood test for alcohol content. The test indicated a blood alcohol content above the intoxication level specified in The State Law. The laboratory findings were challenged by Petitioner at the hearings.

Claimant testified at the formal investigation held on July 8, 1976 that he had been drunk the night before the day of the incident.

Claimant testified that he had stumbled and turned his ankle on the morning of the incident and that his walk led to the intoxication charge.

On the date of the investigation, 24 days after the incident, Carrier witnesses were requested by Claimant's representative to examine Claimant's ankle. Although Carrier witnesses disclaimed medical knowledge, they stated on the record that they observed swelling in Claimant's right ankle.

Carrier witnesses had also referred to the fact that on the day in question, Claimant's face was flushed and his eyes bloodshot. On the day of the hearing, Claimant's representative asked the Carrier witnesses to observe Claimant and describe the color or condition of his face and eyes. The Carrier witnesses stated that Claimant's face was flushed and his eyes red.

The record discloses that subsequent to his dismissal, Claimant voluntarily enrolled in Carrier's Social Counseling Program.

Intoxication on Company property while on duty is a serious offense, meriting discipline. The laboratory tests tend to support the Carrier's finding and we will not disturb the finding. However, such finding is not without some reservation sufficient to raise the question as to whether the extreme disciplinary penalty of dismissal from service is warranted. The General Foreman, under whom Claimant worked, testified that on the day in question, insofar as he observed, Claimant did not appear to be other than his normal self. No witness observed Claimant using or in possession of intoxicants nor was any found at or near his work place. The record contains no indication that Claimant has received any reprimands or any other form of discipline prior to the instant situation.

Claimant has been an employee of the Carrier since 1941. He worked as a foreman for 12 years until about two months before his dismissal from service.

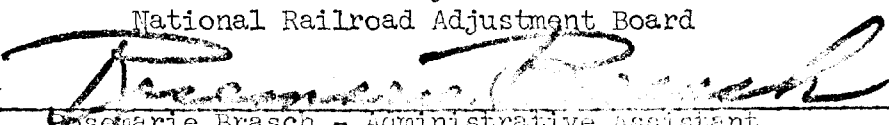
Under all the circumstances here present, we are of the opinion that a one (1) year suspension would have been ample discipline for the offense, and we so rule. Accordingly, we direct that claimant shall be reinstated immediately to the position he held at the time of the dismissal with seniority and all rights unimpaired, with compensation for all time lost in excess of the one (1) year suspension, in accordance with the discipline rule, Rule 24.

A W A R D

Claim sustained to the extent indicated in 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 7th day of March, 1979.