

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

Parties to Dispute: ( Sheet Metal Workers' International  
( Association  
(  
(  
( Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That under the controlling Agreement, Sheet Metal Worker, O. M. Ruiz, was unjustly suspended from service on May 19, 1977, pending an investigation that was subsequently postponed till June 8, 1977 and dismissed from service June 20, 1977.
2. That accordingly, the Carrier be ordered to reinstate Claimant to service, seniority rights unimpaired and pay him all wages lost as a result of his dismissal.
3. In addition, make Claimant whole for all losses.
4. Compensate the Claimant for all overtime losses.
5. Make Claimant whole for all holiday and vacation rights.
6. Pay premiums on health and welfare and all other insurance that claimant may be entitled to.
7. Pay interest of six (6) percent on all lost wages.
8. Remove all charges brought against Claimant 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 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 charged with a Rule G violation; following an investigation he was found guilty and discharged.

Petitioner argues that the Agreement was violated in four principle respects: (1) Claimant did not have a fair hearing in that Carrier suspended him prior to the hearing; (2) Claimant was pre-judged and hence did not have a fair hearing; (3) Carrier failed to establish Claimant's guilt; and (4) the discipline assessed was arbitrary and unreasonable.

A study of the transcript of the investigation reveals no support for Petitioner's contentions with respect to pre-judgement or unfair hearing. Further, Carrier was within its rights in suspending Claimant prior to the investigation; such action did not indicate pre-judgement.

The testimony at the investigation revealed that cold beer was found in Claimant's car, parked on Carrier's premises, some 4½ hours after the start of his shift. This finding was correlated (on a rather tenuous basis) with the discovery of the same type of beer in a paper bag in another employe's possession after he came from the vicinity of the parked car belonging to Claimant. These facts were evaluated in the context of Carrier's discovery of evidence indicating significant current consumption of beer and other alcoholic beverages on its premises during working hours.

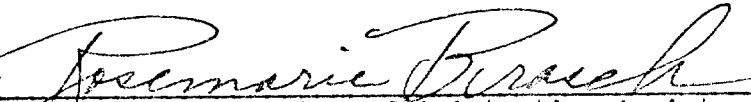
Claimant's explanation for the beer found in his car took the form of three conflicting stories. His Mexican origin and language difficulties do not explain the obvious and major discrepancies. As we have held consistently over a long period of time, credibility findings are within the prerogatives of the Carrier hearing officer and not this Board's. Based on the credibility findings, at minimum, Claimant was in possession of alcoholic beverages on Carrier property on the night in question. Thus, the evidence supports Carrier's conclusion as to Claimant's guilt. Further, we find no basis for questioning Carrier's decision as to the penalty imposed.

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 9th day of May, 1979.