

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

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

Dispute: Claim of Employees:

1. That under the current agreement laborer Ben F. Hampton was unjustly dismissed from the service of the Baltimore and Ohio Railroad Company effective December 27, 1977 and unjustly and arbitrarily held out of service prior to his dismissal.
2. That accordingly the Baltimore and Ohio Railroad Company be ordered to restore this employee with a clean record, seniority rights, vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired and compensated for all lost time plus 10% interest annual on all lost wages. Also credit be given for Railroad Retirement benefits, and reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements 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 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, Ben F. Hampton, a Laborer, assigned to the Engine House at Carrier's Stockyards Terminal located at Cincinnati, Ohio, was dismissed from service of the Carrier effective December 27, 1977, following an investigation held on December 1, 1977, in which Claimant was charged with and adjudged guilty of: leaving his work assignment without permission; being asleep on duty; and consumption of alcoholic beverage while on duty.

On November 23, 1977, fifteen (15) minutes prior to commencement of his regularly assigned shift of 11:00 P.M. to 7:00 A.M., Claimant called and advised his foreman that he would be late for duty. Upon his arrival at work at approximately 1:45 A.M., November 24, 1977, Claimant's supervisor assigned Claimant duties of emptying trash containers and cleaning floors in the Round House. At approximately 3:00 A.M., Claimant's supervisor, in an effort to locate Claimant, searched the Round House, rest room and lunch area but to no avail. Claimant's supervisor

finally found Claimant in his car allegedly with a beer bottle in his hand and asleep. According to testimony, the supervisor attempted to wake Claimant but was unable to do so. The supervisor then returned to the Round House and enlisted the help of the Trainmaster. Both returned to Claimant's automobile and together they were successful in arousing the Claimant.

At the hearing, Claimant admitted to leaving his assignment without permission and to falling asleep in his automobile, but continued to deny having consumed any alcoholic beverage, maintaining that he does not drink. Claimant explained his behavior on the night in question by giving the following account: Claimant testified that on the morning of November 23, 1977, his wife's aunt had died and that while on her way home from the hospital, his wife was involved in an automobile accident. Subsequently the Claimant spent the day both comforting his wife who was distraught over her aunt's death and the accident, and transporting some of his wife's relatives. Claimant recounted that these family misfortunes caused him to report in late for work. At approximately 2:30 A.M., about forty-five (45) minutes after he had been at work, Claimant recalled he had left his pipe in his automobile which he desired to smoke. Claimant testified that when he entered his car he saw an empty beer bottle lying on the floor of his automobile, which Claimant conjectures, must have been left in the car by one of his wife's relatives he had chauffeured earlier in the day. Claimant further testified that as he went to dispose of the empty beer bottle he accidentally fell asleep due to an extreme state of exhaustion and emotional stress brought on by the aforestated events of the day.

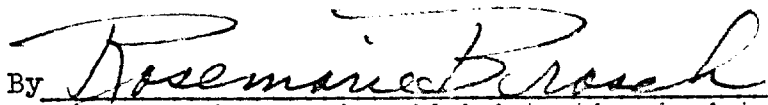
Upon a thorough examination of the record, we find the Claimant received a fair and impartial hearing, noting the Claimant himself acknowledged same at the end of the investigation as reflected by the transcript. Frankly, we find Claimant's account of his actions while at work the morning of November 24, 1977, as difficult to swallow as apparently it is for Claimant to swallow alcoholic beverages. A preponderance of the evidence clearly shows Claimant committed a combination of offenses, each of which, standing alone, has been found by our Board in previous cases to warrant discipline as severe as dismissal. Inasmuch as the Claimant himself confessed to the charges of leaving his assignment without permission and falling asleep on the job, we are left with no other choice but to sustain Claimant's dismissal from service.

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 16th day of January 1980.