

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. 162, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the controlling agreement Rules 34 and 28 were violated when Carman W. V. Calhoun, Houston, Texas was unjustly withheld from service beginning December 17, 1977, and following investigation was unjustly dismissed from the service of the Southern Pacific Transportation Company (Texas and Louisiana Lines) on January 3, 1978.
2. That accordingly, the Southern Pacific Transportation Company (Texas and Louisiana Lines) be ordered to reinstate Carman Calhoun to service with all seniority rights unimpaired and compensate him for all time lost since December 17, 1977, and make him whole for all other contractual rights and benefits that he may be entitled to during the time he is 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.

An investigation was held on December 28, 1977, pursuant to Agreement Rule 34, to determine whether Claimant was under the influence of intoxicants while on duty on December 17, 1977. He was subsequently found guilty of violating Rule G of the Southern Pacific Transportation Company and dismissed from service, effective January 3, 1978. This disposition was appealed on the property and is presently before us.

In defense of his position, Claimant contends that he was improperly suspended from service on December 17, 1977 prior to the investigation in contravention of Rule 34, Paragraph (a) and that Carrier's conduct of the hearing was prejudicial as evidenced by the Hearing Officer's multiple roles. He avers that he was not under the influence of alcohol but acknowledges that he had ingested two beers several hours before his reporting time.

Carrier, contrawise, contends that its decision to suspend him before the investigation was consistent with Rule 34, Paragraph (a) and that the Hearing Officer's conduct of the hearing was fair and impartial. It asserts that three eyewitnesses observed him in an intoxicated condition and such behavior was violative of Rule G. This rule which pertains to the proscription of alcoholic beverages, intoxicants and narcotics, provides that:

"The use of alcoholic beverages, intoxicants or narcotics by employees subject to duty, or their possession, use or being under the influence thereof while on duty or on Company property, is prohibited.

Employees shall not report for duty under the influence of, or use while on duty or on Company property, any drug, medication or other substance, including those prescribed by a doctor, that will in any way adversely affect their alertness, coordination, reaction, response or safety."

In reviewing this case, we do not find that any of the procedural objections raised by Claimant are supported by the evidence. He was provided an investigation that comported with acceptable due process standards and that was visibly free of bias or prejudicial misconduct. The Hearing Officer did not testify as a witness and his general management of the proceeding was neutral and reasonable.

Similarly, we do not find that Carrier's pre-hearing suspension was contrary to Rule 34, Paragraph (a) since an intoxicated employee by definition and uniform agreement poses a potential danger to railroad operations. It would ill serve the public interest to permit an employee suspected of using intoxicants to remain at his position.

The record strongly indicates that he was under the influence of intoxicants in clear violation of Rule G (Supra) and we will not disturb Carrier's findings in the absence of reversible error. In Second Division Award 6373, we held in pertinent part that,

"Prior Second Division Awards have held that layman's observation of an employee's conduct, appearance, smell of his breath and manner of walking are sufficient to determine that he is under the influence of alcohol. Prior Second Division's Awards have established that the Board will exercise corrective measures only if the Carrier's decision is arbitrary and unreasonable, capricious, fraught with bad faith, all amounting to an abuse of discretion." (See also Second Division Award 5704.)

We believe that the three eyewitnesses observation of his conduct, appearance and odor unmistakably showed that he was under the influence of intoxicants that night and this deportment is plainly antithetical to Rule G and our decisional law on this point.

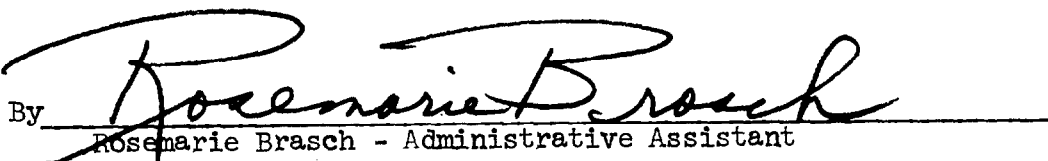
However, because we have concluded that his suspension to date was sufficient punishment for this offense, we will reinstate him to service on a leniency basis but without back pay. We hasten to add that we will not look kindly upon any recidivist behavior and in fact, will sustain a dismissal penalty if such behavior is repeated. Intoxication is a very serious offense in the railroad industry that will just not be accepted or condoned. We expect that Claimant will diligently abide by all the rules and regulations governing the employment relationship and prove that he is an effective employee.

A W A R D

Claim sustained to the extent expressed herein.

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 2nd day of April, 1980.