

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

Parties to Dispute:

( System Federation No. 4, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Carmen)  
  
Grand Trunk Western Railroad Company

Dispute: Claim of Employees:

1. That the Grand Trunk Western Railroad Company violated the controlling agreement when Carman William Ross was improperly discharged from service on April 28, 1978 as a result of investigation held on April 18, 1978.
2. That accordingly, the Grand Trunk Western Railroad Company be ordered to restore Carman William Ross to service with seniority rights, vacation rights, and all other benefits that are a condition of employment unimpaired, with compensation for all time lost from April 14, 1978 plus reimbursement for all losses sustained account of loss of coverage under Health and Welfare and Life Insurance Agreements during time 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 notified by letter dated August 14, 1978, "to attend an investigation to be held on Wednesday April 19, 1978 ... to determine your responsibility, if any, for violation Rule 3, para (b) of the G. T. General Rules which state - 'Employees shall not report for nor be on duty, at any time, under the influence of intoxicants or any other substance whatsoever (including those prescribed for them for medical reasons) that will in any way adversely affect their alertness, coordination, reaction response or ability to work properly safely' on Friday, April 14, 1978."

The hearing was held as scheduled. It was conducted in accordance with statutory requirements and in accordance with past practice. Following the investigation the action herein complained of was taken by the Company on April 28, 1978.

Testimony of company witnesses reveal that about 10:45 A.M. on the date under consideration claimant's supervisor during conversations with Mr. Ross noticed that his eyes were half closed and smelled alcohol on his breath. He called two other company officials to observe Claimant's condition. All testified that his eyes were drooping and alcohol was present on his breath. Claimant promptly admitted that he had been partying late and had drunk a beer some time during the morning. The witnesses testified that claimant's supervisor asked him if he would consent to go to the hospital for a blood alcohol count, noting that he had a choice of whether he wanted to go or not. Mr. Ross readily consented to take the test and in fact signed a statement to that effect at the hospital. The Organization views such action as a violation of claimant's rights since he did not have the benefit of counsel with the local representatives. The record indicates that the decision was freely made by Mr. Ross. The claimant waived the right of counsel and the Carrier cannot be faulted for his action.

The alcohol count introduced in the record indicated that claimant had a count of 0.182 gm. The doctor indicated that a count of 0.10 gm would show recent intoxication. An exhibit in the record cites Michigan law to the effect that 0.10 gm or more constitutes a condition of being under the influence of alcohol.

The Organization maintains that the rule was not violated even though the alcoholic content was above normal since the Carrier did not prove that the claimant's ability to function was impaired. We disagree. The rule simply states the employee will not be under the influence of intoxicants or any other substance which will cause impairment of physical abilities.

Based on the testimony of competent witnesses and the doctor's report this Board concludes that claimant was under the influence of intoxicants and the rule was violated. There is nothing in the record to indicate that the penalty was excessive. A review of claimant's past record indicates a performance far from exemplary and we must conclude that the Carrier's action was well within its legal rights.

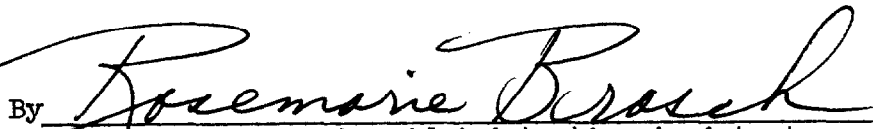
A W A R D

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 23rd day of July, 1980.