

The Second Division consisted of the regular members and in addition Referee Higdon C. Roberts, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 91, Railway Employees'  
                          { Department, A. F. of L. - C. I. O.  
                          { (Carmen)  
                          { Kentucky and Indiana Terminal Railroad Company

Dispute: Claim of Employees:

1. That Carman R. B. Kelley was dismissed from service in violation of the current agreement on March 3, 1978, and
2. Accordingly, the Kentucky and Indiana Railroad should be ordered to
  - (a) Restore him to service with seniority and all employee rights unimpaired.
  - (b) Compensate him for all time lost as a result of his dismissal with interest at the rate of 6% per annum on all money due him, and
  - (c) Pay premiums for his hospital, surgical, medical, group life insurance and supplemental sickness benefits for the entire time he is withheld from 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 were given due notice of hearing thereon.

The claimant (R. B. Kelley) was discharged for allegedly reporting for work intoxicated and unable to perform his work safely or adequately. The investigation revealed the following: (1) claimant drove his car onto a concrete slab just before work time. He required considerable assistance to get the car off the slab. (2) Mr. Rush, observing this, talked with Mr. Kelley for about 5 minutes and noted he could neither talk nor walk normally. (3) Mr. Kelley fell in the parking lot, cutting his face. (4) Foreman Rush called foreman Tracy, who observed further that claimant was not acting normally. Mr. Tracy also asked claimant if he'd been drinking, and he said "yes". (5) Foreman Rush smelled alcohol on claimant's breath, but Tracy did not (he had a cold). As a result of these incidents and observations, Mr. Rush relieved the claimant from duty.

The organization never directly challenged the testimony of the carrier witnesses. Most telling was lack of cross-examination concerning claimant's admission of drinking to Mr. Tracy. The claimant said he was sick at the time and his blurred speech and unsteady walk a result of his fall in the parking lot and taking Contac pills. Mr. Rush, however, had observed him for at least 5 minutes before the fall, noticing the speech and walk. Also at the time, claimant never mentioned being on any kind of medicine.

It is well-established that intoxication need not be proven through medical or other formal tests. Reasonable men can make this type of determination. When, as in this case, the observation includes two witnesses capable of determining normal or drunken behavior, it is sufficient evidence, unless countered by more probative evidence.

The claimant's prior record is such as to find the discipline warranted.

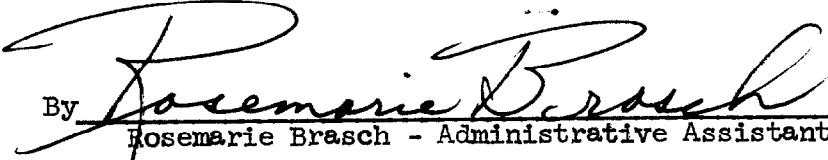
A W A R D

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.