

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Southern Pacific Transportation Company

Dispute: Claim of Employee:

1. That under the current Agreement, Upgraded Freight Carman Apprentice B. R. Yates, hereinafter referred to as the Claimant, was unjustly deprived of his service rights and compensation when he was improperly discharged from service under date of July 17, 1978 after four (4) years of service with the Carrier.
2. That the Carrier be ordered to:
  - (a) Restore the aforementioned Claimant to service with all service and seniority rights unimpaired, and he be compensated for all time lost retroactive to June 26, 1978, the date Claimant was unjustly removed from service.
  - (b) Grant to the Claimant all vacation rights he would have enjoyed had he not been unjustly removed from service.
  - (c) Assume and pay all premiums for hospital, surgical and medical benefits for Claimant and dependents, including all costs for life insurance.
  - (d) Pay into Railroad Retirement Fund the maximum amount that is required to be paid for an active employee, for all 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.

The record shows that claimant, an upgraded Carman Apprentice, entered Carrier's service on April 22, 1974. On June 26, 1978, he was instructed to attend a formal hearing at 9:00 A.M., July 7, 1978, in connection with:

"... your allegedly being under the influence of intoxicants and attacking your supervisor with a rock on June 26, 1978,

"for which occurrence you are hereby charged with responsibility which may involve violation of those portions of Rules 'G' and 801 of the General Rules and Regulations reading:

Rule 'G': 'The use of alcoholic beverages, intoxicants or narcotics by employes subject to duty, or their possession, use, or being under the influence thereof while on duty or on Company property, is prohibited...

Employes shall not report for duty under the influence of, or use while on duty or 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.'

Rule 801: 'Employes will not be retained in the service who are ... quarrelsome or otherwise vicious...'

You are entitled to representation in accordance with the M. P. & C. Departments' Agreement and to bring such witnesses to the hearing as you may desire."

The record shows that claimant signed a receipt of acknowledgement of the letter of charge. However, he was not present at the hearing or investigation, nor did he request a postponement of same. His actions in this respect were at his peril. The hearing was conducted in his absence and a copy of the transcript of the hearing has been made a part of the record. On July 17, 1978, claimant was notified of his dismissal from service.

The Board has carefully reviewed the transcript of the formal hearing and finds substantial evidence in support of the charge of claimant being under the influence of intoxicants and attacking his supervisor.

In the Organization's submission to this Board it is stated that claimant had transportation problems that prevented his attending the hearing on July 7, 1978. Claimant had at least nine days notice of the hearing, and it appears reasonable that if he had transportation problems preventing his attendance, he would have contacted his superior officer or the representative of the Organization to request a postponement prior to the beginning of the hearing, but there is no record of his having done so.

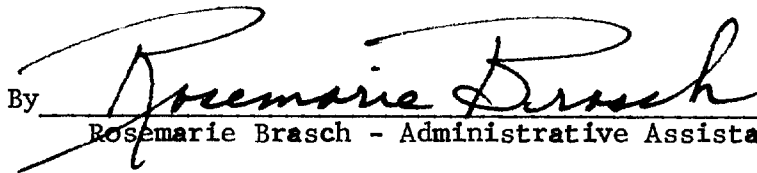
Based upon the record, the Board concludes that Carrier's actions in dismissing claimant from service were not arbitrary, capricious or in bad faith. There is no proper basis for the Board to interfere with the discipline imposed.

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 4th day of March, 1981.