

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  
{ Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That Carman D. W. Walker was dismissed from service in violation of the current Agreement on February 15, 1978, after having been withheld from service from January 14, 1978.
2. Accordingly, the Louisville and Nashville 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 of 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 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.

On the date of the occurrence out of which the claim herein arose, claimant was working as a carman, having entered Carrier's service as an apprentice on June 6, 1967, and with seniority as a carman from May 5, 1971.

On the night of January 14, 1978, the Carrier's Radnor, Tennessee, wrecker was called for 9:45 P.M. The Foreman-Car Shop arrived at the wrecker track about 9:30 P.M. Upon his arrival at the wrecker, the Foreman was asked by the claimant if he could receive a radio so that he could pick up his girl friend at the air port and meet the wrecker later at Bruceton, Tennessee, where the wrecker was to be sent. The Claimant's request was denied by the Foreman. The record shows that there was some further discussion, with the Claimant stating at one time "Well, I just won't go", (with the wrecker). Later the Claimant told the Foreman that if the Foreman did not go along with his earlier request that he (the

claimant) would have to hit him (the Foreman). The Foreman again denied the request, at which time the claimant struck the Foreman.

On January 17, 1978, Claimant was notified by the Master Mechanic:

"You are charged with reporting for duty at Radnor Wrecker track under the influence of an intoxicant and further charged with assaulting an official, Mr. R. R. Haley, and threatening Master Mechanic T. M. Harris and General Car Foreman D. J. Lilly, between 9:30 p.m. and 11:40 p.m., January 14, 1978.

The matter will be investigated in the Assembly Room of the Division Office Building, Radnor, Tennessee, on Thursday, January 26, 1978, at 9:00 a.m., and you will, therefore, be permitted to attend this investigation on the date and at the hour named, to answer such charge or charges, hear all of the evidence submitted, interrogate witnesses, and be represented by fellow employees of your own selection, if desired. You may bring any witnesses you desire to testify in this case.

The charge or charges to be brought against you and the investigation to be made will be for the purpose of discipline under Rule 34 of the current agreement."

The investigation was conducted by Carrier's Superintendent-Terminal on January 26, 1978. The claimant was present throughout the investigation and was represented by his Local Chairman. A copy of the transcript of the investigation has been made a part of the record. A review of the transcript shows that the hearing was conducted in a fair and impartial manner, and that none of claimant's substantive procedural rights was violated. There was substantial evidence adduced at the investigation, including claimant's statement, of the charge of "assaulting an official, Mr. R. R. Haley, and threatening Master Mechanic T. M. Harris and General Car Foreman D. J. Lilly". There was also evidence by a Special Agent that the odor of alcohol was detected on claimant. Claimant stated that the last drink that he had was about three hours prior to coming on duty.

Following the investigation, Claimant was dismissed from service on February 15, 1978.

Upon review of the entire record, the Board finds that Carrier's action in dismissing claimant from the service was 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.

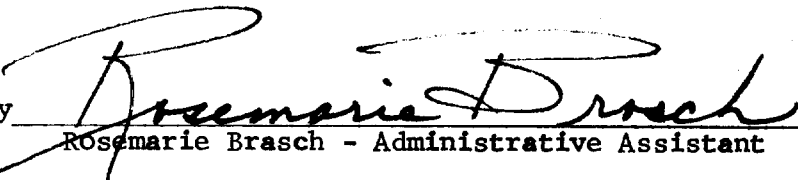
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Award No. 8652  
Docket No. 8488  
2-I&N-CM-'81

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.