

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  
( Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, Car Cleaner Willie Falkner was unjustly treated when he was dismissed from the service of the Illinois Central Gulf Railroad on October 2, 1978, subsequent to an investigation which was held on Friday, September 22, 1978.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to restore Car Cleaner, Willie Falkner to service with all seniority rights unimpaired, compensate Mr. Falkner for all time lost beginning on September 22, 1978, until such time he is restored to service, and for any and all other benefits he would be entitled to as a condition of employment, account of the aforementioned unjust dismissal.

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 claimant, who was 58 years of age, had been in Carrier's service for 28 years. At the time of the incident giving rise to the dispute herein, he was employed by the Carrier at 18th Street, M. U. Shop, Chicago.

After reporting for duty on September 14, 1978, he gathered together the necessary materials needed for the performance of his work; placed them on his wagon, and was pushing his wagon toward the water fountain when he fell, striking his left upper forearm and the back of his head. Two supervisory personnel saw him fall and both helped him to his feet. Claimant was, at the time, asked if he wanted to see a doctor and he replied in the negative. Some ten or fifteen minutes later he changed his mind; necessary arrangements were made, and he was transported to the doctor by the Car Foreman.

The doctor reported that while claimant was being examined, he smelled of alcohol, and had the appearance of being intoxicated. With claimant's permission, a blood test was conducted. A report of the blood test showed a blood level of alcohol of 270 MG/DL, with the legal limit being between 0-100 MG/DL or 0.100.

On September 18, 1978, claimant was notified by Carrier's General Foreman:

"Please arrange to attend a Formal Investigation to be held in my office at 18th St. M.U. Shop, Chicago, Illinois at 10 A.M., September 22, 1978, for the purpose of determining whether or not, you were intoxicated on duty, Thursday - September 14, 1978. You may bring a representative and witnesses in your behalf as provided in your schedule agreement. At this time your personal file will be reviewed."

The investigation was held as scheduled, and on October 2, 1978, claimant was notified of his dismissal from service. A copy of the transcript of the investigation has been made a part of the record. We have carefully reviewed the transcript of the investigation and find that none of claimant's substantive procedural rights was violated. The reading of claimant's past record into the investigation was not in violation of the agreement.

In the investigation, a letter from the doctor was read covering his observation of claimant on September 14, and the result of the blood level of alcohol test. Also, in the investigation claimant stated that he had been drinking at a party between 12:00 midnight and 1:00 A.M., the night before.

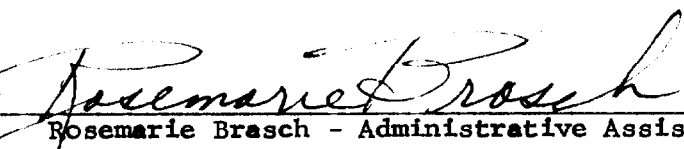
It is the considered opinion of the Board that there was substantial evidence adduced at the investigation in support of the charge against claimant; however, considering his twenty-eight years of service, permanent dismissal was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service.

A W A R D

Claim sustained to the extent indicated in Findings.

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 September, 1981.