

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

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

Dispute: Claim of Employees:

1. That under the current Agreement, Apprentice S. J. Hopper, 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 December 6, 1978, after four (4) years and seven (7) months 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 October 30, 1978, the date he was removed from service.
  - (b) Grant to the Claimant all vacation rights he would have enjoyed, had he not been 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 the 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. Plus, that Claimant be granted any and all benefits he would have enjoyed had he not been removed 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 October 30, 1978, Mr. Hopper was working as a Carmen Apprentice at Sacramento, going on duty at 7:00 A.M. in the Stripping Area of the Car Shops. At about 10:00 A.M., General Foreman Byron R. Parker received a call from Claimant Hopper's foreman advising him that Hopper was asleep in a car. Mr. Parker, accompanied by Departmental Car Foreman A. R. Kimmel, drove to the Stripping Area and discovered Claimant in an open box car lying down with his eyes closed. Their efforts to get his attention confirmed that he was asleep. They woke him and engaged him in conversation until they determined he should be removed from service and charged with violation of Rule G and Rule 810, such rules reading as follows:

"RULE G

The use of alcoholic beverages, intoxicants or narcotics by employees subject to duty, or their possession, use or being under influence thereof while on duty or on Company property, is prohibited."

"RULE 810

Employees must not sleep while on duty. Lying down or assuming a reclining position, with eyes closed or eyes covered or concealed will be considered sleeping."

Formal investigation was conducted on November 30, 1978, and as a result thereof Mr. Hopper was discharged. We have reviewed the record and find no justification for altering the Carrier's judgment in the matter.

The testimony of Messrs. Kimmel and Parker constitutes clear and convincing proof that Claimant was in violation of both rules on the date in question. Certainly a strong inference is raised that claimant consumed alcohol during the 3 hours he was on duty, but in any event it is fully apparent from his condition as described by the two witnesses that he consumed alcohol while subject to duty and was intoxicated when confronted by his superiors.

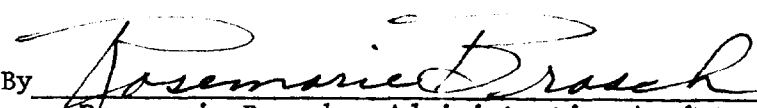
We further find that the formal investigation was fairly and properly conducted. Contrary to the Union's contention, Mr. Hopper was given full opportunity to develop his defense.

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 2nd day of September, 1981.