

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement and the Burlington Northern schedule of rules, the Carrier unjustly suspended Machinist T. B. Smith from service effective September 7, 1978 and unjustly dismissed Machinist Smith from service effective October 12, 1978.
2. That accordingly, the Carrier reinstate Machinist Smith to service with seniority rights unimpaired and all other rights and privileges restored, and compensate Machinist Smith for all wages lost as a result of his suspension for dismissal from service from September 7, 1978 to the present date.

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.

The Claimant was advised of a formal hearing concerning a charge that he violated Rule "G".

Subsequent to the investigation, the Claimant was dismissed from service.

The Employees have questioned the propriety of the suspension of the Employee pending the investigation, despite the fact that Rule 35(b) of the agreement permits suspension in cases involving "serious infraction of rules pending investigation". The Organization insists that the rationale for the cited language is to prevent likely or threatened reoccurrence of an offense, and that there is no showing that the criteria is met in this case.

Regardless of the merits of that contention, we do not find that the Employees raised that question in significant terms while the matter was being handled on the property and, accordingly, we find it inappropriate to consider it at this level.

On September 6, 1978, two locomotives collided in the Carrier's Diesel Shop, which resulted in an injury to the Claimant, who was transported to the hospital for examination. Because the Foreman-Locomotives detected an odor of alcohol on Claimant's breath on the way to the hospital, instructions were issued to request a blood test from the Claimant. He voluntarily submitted to such a test.

Despite the testimony that alcohol was smelled on his breath, and the results of the tests, the Claimant denied that he consumed any alcoholic beverage during his tour of duty, or immediately before that time.

The blood test demonstrated that the Claimant had .18 alcohol content in his blood when it was tested. The laboratory report contains an interpretation which indicates that .2 indicates intoxication, and that levels decrease by about .01-.02 per hour.

Thus, in addition to the testimony of the Foreman and another employee concerning the odor of alcohol, we have before us evidence indicating a substantial amount of alcohol in the Employee's bloodstream at approximately 7:45 p.m.

The Claimant had reported for duty at 3:00 p.m., and the accident occurred at approximately 5:30 p.m. Thus, the blood alcohol report strongly indicates that - given the rate of decrease in the system - the Employee was in a state of intoxication when he reported for duty.

Rule G not only precludes drinking on duty, but also clearly prohibits use of alcoholic beverages by employees subject to duty. Thus, it is of little moment whether the Employee drank after he reported for work, or if he reported in an impaired condition.

We are not unmindful of the Employee's disclaimer, nor have we ignored the testimony that the Employee performed his duty prior to the incident which resulted in his being transported to the hospital. Neither have we ignored Second Division Award 7187. But, none of those elements convince us that the Carrier acted improperly. The clear rule (which the Employee understood) prohibits employees from reporting to work under the influence of alcoholic beverages. The fact that he might, or might not, perform certain aspects of his duties prior to his condition being detected is not an automatic defense.

Whatever may be the significance of the discussion of "influence" in Award 7187, the fact remains that being "under the influence" is clearly defined by chemical analysis, as it is undisputed that various alcoholic amounts in a person's bloodstream has a debilitating effect in direct proportion to the amount of alcohol contained therein. It cannot be seriously urged that a blood alcohol level slightly below "intoxication" is not, in and of itself, an "impairment" of ability to function and, accordingly, we will deny the claim.

A W A R D

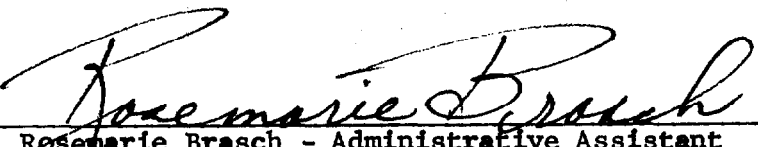
Claim denied.

Form 1
Page 3

Award No. 8821
Docket No. 8704
2-BN-MA-'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 10th day of November, 1981.

