

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

Parties to Dispute: { International Brotherhood of Electrical Workers
Consolidated Rail Corporation

Dispute: Claim of Employee:

1. That the Consolidated Rail Corporation (ConRail) was arbitrary and unjust in their action of dismissal from service of Electrician R. R. Noel on August 7, 1979.
2. That accordingly, the Consolidated Rail Corporation (ConRail) be ordered to restore Electrician Noel to service with all seniority rights unimpaired and compensated for all wage lost by their unjust action in the dismissal of Electrician R. R. Noel.

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 Employee was notified that he was held out of service on July 10, 1979 "...pending trial and decision in connection with being found...under the influence of alcoholic beverages".

Subsequent to a hearing, the Carrier found that the Claimant was guilty, and he was dismissed from the employ of the Carrier.

A Foreman testified that on the day in question, the Employee had a "glassy" look in his eyes, he did not walk with a steady gait, and he had an odor of alcohol about him. Moreover, he appeared to stumble at one point.

The Shop Superintendent became aware of the allegations against the Employee, and when he talked to the Claimant, he also detected an odor of alcohol. He also testified that the Claimant became boisterous and belligerent, and he had slurred speech and was glassy-eyed.

The Assistant Shop Foreman generally confirms the above-cited testimony.

Other testimony was received concerning the Employee's impaired state as well as evidence which was designed to demonstrate that the Employee had certain normal difficulties with his gait, etc., which could have suggested that he was not actually under the influence of alcohol.

The Carrier requested that the Employee submit to a blood alcohol test to determine his physical condition, and he agreed. At the hospital, the Claimant repeated his consent to the test, which was administered. When the results were received, according to Carrier, they were given to the Claimant, but the hospital refused to make the Carrier Representatives aware of the outcome of the test; stating that if the Carrier desired same, it would have to subpoena same.

At the hearing, the Claimant denied that he was given a copy of the blood test, or that he received an opinion as to his condition.

Our review of the evidence of record indicates that there is ample evidence to suggest that certainly the Employee had consumed an alcoholic beverage prior to his reporting for duty and was in such an impaired state while on duty. We realize that the Employee has argued to us that there is no evidence to show he was "on duty"; but that argument was not advanced at the lower level. The question of the blood test results is, to some extent, disturbing in that certain evidence was obtained, and apparently the medical authorities felt it inappropriate to advise the Carrier of the results. We find it quite difficult to accept the conclusions that the Claimant was never made aware of the results, because otherwise, the hospital would be in a position of taking certain tests and not giving the results to anyone.

We have noted the Employee's lengthy service with the Carrier, and we have also noted that he was experienced certain disciplinary problems toward the latter part of his career.

Our difficulty with the particular dispute is that the Carrier asserted that it has proved that the Employee was under the influence of alcohol, as contrasted to a showing that the Employee had consumed alcohol while subject to duty. We recognize that the evidence against the Claimant is significant, however, we question that it amounts to a total showing of "under the influence" as we accept that phrase, absent a more significant showing of a blood test result or other more specific evidence. Certainly, however, there was no question that the Employee had consumed alcohol while subject to duty, and we feel that a finding to that effect is includable within the overall charge. Accordingly, we will sustain the claim to that extent, and restore the Employee to service, but without back pay.

A W A R D

The termination is set aside. The Employee shall be restored to duty with retention of seniority and other rights, but without reimbursement for any compensation lost during the period of the suspension.

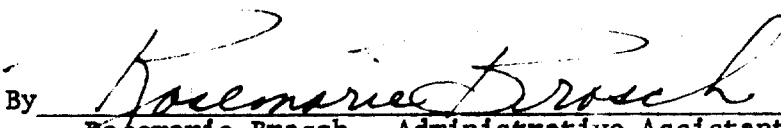
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Award No. 8850
Docket No. 8830
2-CR-EW-'82

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 6th day of January, 1982.

