

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current Agreement Machinist M. A. Shippey (hereinafter referred to as Claimant) was improperly removed from service on December 15, 1979, and subsequently assessed a twenty-five (25) day suspension.
2. That, accordingly, the Carrier be ordered to compensate Claimant for all wage loss incurred as a result of improper suspension from service for twenty-five (25) days.

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.

Claimant, Mr. M. A. Shippey, was employed by the Southern Pacific Transportation Company as a machinist at its diesel shop service track in Roseville, California at the time of the incident in question. He was working the 4:00 P.M. to 12:00 A.M. shift. On December 17, 1979 Claimant received notice from Carrier to appear at formal hearing on December 19, 1979 (which hearing was subsequently held on December 20, 1979) for investigation of alleged violation of Rule G of Carrier General Rules and Regulations on December 15, 1979. In accordance with Rule 39 of the controlling Agreement, Carrier exercised the option to suspend Claimant on December 16, 1979 pending outcome of the hearing. On January 8, 1980 Claimant was notified of Carrier decision of discipline of 25 calendar days for having violated Rule G.

Rule G reads (in pertinent part):

"the use of alcoholic beverage ... or their possession ... or being under the influence while on ... company property, is prohibited..."

Pertinent to the instant case is the sole issue of whether Carrier's discipline of Claimant passes the litmus test of substantial evidence as this relates to the application of Rule G. Neither Carrier charge nor Rule G itself of Carrier as quoted in pertinent part to Claimant in Carrier's original charge addresses the issue of alleged violation by Claimant of Rule "... while on duty...", but only Claimant's violation of Rule "... while on property ...", and the Board will limit its own determination to an analysis of evidence related to this latter, narrow issue.

There is clearly conflicting perceptions among witnesses, in this case, concerning what transpired on the evening of December 15, 1979 on Carrier property. After an analysis of the trial transcript it is the position of the Board, however, that Carrier has met the test of substantial evidence. Two corroborating witnesses, Messrs. R. L. Stubbs, Assistant Terminal Superintendent, and P. B. Briggs, General Foreman, have both testified that they detected the odor of alcohol on the breath of Claimant on the evening of December 15, 1979 when Claimant was on property. One of these witnesses further testified that he saw two opened Budweiser cans in Claimant's van at that time which is coincidental evidence which cannot be considered to be completely irrelevant. Additional but weaker supporting evidence of Board's determination which is consistent with the above is that both of the witnesses noted that Claimant's eyes were red and watery (which could have been the result of eye strain since Claimant had driven from Lodi to Roseville, California that night), and one testified that Mr. H. A. Thomson stated later that day that Claimant had offered him a can of beer which was refused (this latter, however, can be construed as evidentiary hearsay which was denied by Mr. Thomson). Claimant could have taken a few simple measures, however, to have indisputably proven his innocence which, nevertheless, for his own reasons he refused to do. He could have taken a sobriety test on the evening of December 15, 1979 and/or he could have provided evidentiary facts, on the spot, to show that he had no alcohol in his van. He refused to do both and thus forfeited, in the mind of the Board, the strongest counter-vailing evidence available to him if, in fact, he did not have in his possession, nor if he was not under the influence of, alcohol while on Carrier property on the evening of December 15, 1979.

It is not the role of the Board, which serves an appellate function, to resolve issues of credibility, nor to substitute its judgment for that of Carriers in discipline cases. Its role is to determine if there is substantial evidence to sustain a finding of guilt (See Second Division Awards 7912, 7955, 6948 et alia.).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of April, 1982.