

The Second Division consisted of the regular members and in addition Referee Albert A. Blum 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 terms of the current Agreement Machinist C. A. Leal (hereinafter referred to as Claimant) was improperly suspended from service on January 24, 1980, and subsequently dismissed on March 6, 1980.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired and with compensation for all wage loss from date of suspension to date of restoration to 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 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.

Machinist C. A. Leal, the Claimant, was at work on January 24, 1980. He had first started to work for the Carrier in 1955, furloughed in 1957, and recalled in 1965 and has worked there since then. Two Carrier supervisors, Foremen J. A. Nagle and C. W. Fuller, went to the locker room at about 1:00 p.m. and discovered the Claimant and Machinist G. Marines there. The Claimant and Machinist Marines were then charged with possession of alcoholic beverages, being quarrelsome and using profane language with a superior officer. They were dismissed, after a hearing, on March 6, 1980. Both persons were offered a leniency reinstatement in May of 1980. Machinist Marines accepted it; the Claimant did not.

The Organization's position is that the hearing took place nineteen days after the event and this is not "prompt" as required by Rule 39 of the controlling Agreement. The Organization challenges the Carrier's reasons for the delay in that the Organization believes that the Carrier has the "managerial responsibility" to hold the hearing promptly.

The Organization also argues that there was inadequate proof to substantiate the charge that the Claimant was in possession of an alcoholic beverage or under its influence on the date in question. First, when the supervisors came into the locker rooms, there were other employes there who immediately fled and the Carrier did not try to discover who they were.

One supervisor then claims he saw the Claimant placing a can of beer, contained in a paper bag, in the wash basin. The Claimant, however, denies that this took place. The Organization feels it may well have been one of the employees who had fled who put the beer can in the wash basin.

In response to the charge that the Claimant was quarrelsome and vicious, the Organization responds that the Foremen Nagle and Fuller behaved in a "very ungentlemanly and provocative" manner and therefore "it was only natural for the Claimant to react in the defensive manner in which he did".

The Carrier, on the other hand, claims that Foreman Fuller saw the Claimant place the can of beer in a paper bag in the wash basin. After being confronted with the evidence, the Carrier points out that the Claimant's behavior as described by six witnesses was "vicious", "threatening", "violent", "belligerent", "profane", and "argumentative". Both foremen reported that they detected a smell of alcohol on the Claimant's breath. The Carrier also argues that the Claimant should not have been at the locker room at that time; he should have been at his work assignment.

The Carrier also explains why there was a delay in the hearing. It says it had a heavy schedule of cases and one witness was on vacation. The latter's appearance was needed to have a fair hearing. It points out that the Carrier has delayed hearings when the Organization faced a conflict in dates; the Carrier feels it should have received the same courtesy. Moreover, the Carrier declares that there is no specific definition to the term "prompt". The Carrier handled the hearings as quickly as possible and feels that no harm came to the Claimant because of the date of the hearing.

The Board agrees that given the lack of exactitude in what is meant by the term "prompt"; given the reason for the slight delay; and given the fact that the hearing did not reflect any evidence that the Claimant was harmed by when the hearing was held, that the Organization's challenge that Rule 39 was violated should be rejected.

Concerning the substantive issues raised in this case, the Board notes that nearly all of the witnesses reported that the Claimant was abusive, quarrelsome, and used profanity in dealing with his supervisors. There is little, if any, evidence to support the claim that the supervisors' behavior, other than charging the Claimant with possession of an intoxicating beverage, was of such a nature as to have provoked the kind of behavior it did. The Organization also explains the Claimant's reactions as being caused by his being charged with an action of which he was innocent; but such a reaction might also be prompted by being caught in an action of which one is guilty.

The question, then, is whether the Claimant was guilty of possession of an intoxicating liquor. As this Division said in Award 6251 and 6408:

"Carrier is entitled to rely on the observations of its supervisory employees ... It is not this Board's function to resolve conflicts in testimony and we will not disturb discipline case findings that are supported by credible, though controverted evidence."

Although in this case, as in many cases, there are two different versions of what took place, there was enough credible evidence that the Claimant was in possession of intoxicating liquor, even though denied by the Claimant to justify our not disturbing the Carrier's decision, particularly since there is also clear evidence that the Claimant behaved in a fashion, however, the Claimant might explain it, that is in violation of Rule 801 which states that employees "will not be retained in the service who are quarrelsome or otherwise vicious..."

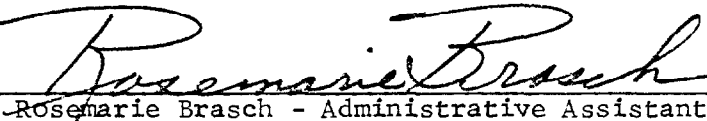
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of June, 1982.