

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

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(Southern Railway Company

Dispute: Claim of Employee:

1. That under the current and controlling agreement, Laborer L. M. Johnson was unjustly suspended from service of the Southern Railway Company on May 12, 1980, and after a formal investigation was held on May 28, 1980, was subsequently dismissed from service on May 30, 1980.
2. That accordingly L. M. Johnson, Laborer, be restored to his regular assignment at Monroe, Virginia, compensated for all lost time, vacation, health and welfare, hospital and life insurance and dental insurance premiums be paid effective May 12, 1980, and the payment of 6% interest rate be added thereto.

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 was charged with being under the influence of an intoxicant on May 11, 1980. After investigation and hearing, Claimant was dismissed from service.

The Carrier contends that substantial evidence was adduced at a fair and impartial investigation which conclusively proved that Claimant was guilty of being under the influence of an intoxicant, as charged. Additionally, the Carrier maintains that under all the facts and circumstances of this matter, including the prior disciplinary record of Claimant, dismissal was clearly justified.

Claimant argues that there was no substantial evidence adduced against him which would justify discharge under these facts. Claimant stressed that the Foreman permitted Claimant to perform work duties at the time of the disputed

incident. Moreover, Claimant stressed his long service record of approximately 35 years (Claimant entered the service of the Carrier on November 19, 1945).

After careful consideration of the evidence on this record, the Board finds that the record contains substantial proof supporting the allegations that Claimant was guilty of being under the influence of an intoxicant as charged. Nothing in the record leads the Board to the conclusion that the discipline assessed was arbitrary, capricious, discriminatory or excessive. Therefore, the Board rules to uphold the findings and determinations made by the hearing officer from evidence adduced at the May 29, 1980 investigatory hearing.

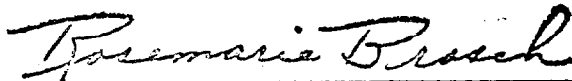
A W A R D

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 15th day of December, 1982.