

The Second Division consisted of the Regular members and in addition Referee Steven Briggs when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Southern Pacific Transportation Company

Dispute: Claim of Employes:

- "1. That in violation of the current agreement Fireman and Oiler Clark S. Olmsted, was unjustly suspended on September 29, 1979, and dismissed from service of the Carrier on November 6, 1979, following a hearing held on October 8, 1979.
2. That accordingly, the Carrier be ordered to make the aforementioned C. S. Olmsted, whole by restoring him to Carrier's service with seniority rights unimpaired plus restoration of all holiday, vacation, health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, custom or law and compensated for all lost wages. In addition to money claimed herein, the Carrier shall pay the Claimant an additional amount of 6% per annum compounded annually on the anniversary date of this claim."

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 Claimant joined the Carrier's employ on October 9, 1974. On September 29, 1979, he was working as a laborer on the 7:30 a.m. to 3:30 p.m. shift, with a 12:00 to 12:20 p.m. lunch period. Roundhouse Foreman G. L. Triebwasser and General Foreman M. A. Giusti observed the Claimant leave the Locomotive Plant in his automobile at 11:55 a.m. without permission. Foreman Giusti followed the Claimant and observed him enter a bar. He remained inside until approximately 12:55 P.M. whereupon Giusti observed him return to his car. Giusti then returned to work.

At 1:20 p.m. Giusti and Triebwasser saw the Claimant returning to his work location. In their opinion he appeared to be under the influence of alcohol. They also observed two six-packs of beer in the Claimant's automobile. As a result, the Claimant was escorted off the property.

The Carrier charged the Claimant with violation of the following General Rules:

Rule 810: Employees . . . must not absent themselves from their employment without proper authority. . .

Rule "G": The use of alcoholic beverages by employees subject to duty, or their possession, use, or being under the influence thereof while on duty is prohibited.

After being rescheduled once at the Claimant's request, a hearing was held on October 8, 1979. In the Carrier's opinion the evidence at the hearing confirmed the Claimant's guilt. He was dismissed from service via a November 6 letter.

The Carrier believes that the evidence against the Claimant is clear and substantial. Two different supervisors (Triebwasser and Giusti) saw the Claimant leave his work assignment without permission, drive to a bar, and return to work about an hour and twenty minutes later under the influence of alcohol. Both men testified that the Claimant had the odor of alcohol on his breath upon his return and that his speech was impaired. Giusti testified that two six-packs of beer were found in the Claimant's automobile and that he asked the Claimant to take a blood test. The Claimant declined. . . Furthermore, the Carrier notes, General Foreman Palmiter was called to the location to assist and he too confirmed that the Claimant appeared to be under the influence of alcohol and had beer in his car.

The Claimant's version of the events of September 29 is as follows: He went to the bar to pay his tab and while there he had a hot dog and a coke. When he attempted to leave the bar he discovered his car would not start. He then tried to call the Carrier's personnel department to tell them he would be a little late, but the line was busy. A friend jump started his car for him about 1:10 p.m. On the way back to work he stopped for gas and, since he was planning a party for that evening, he bought two six-packs of beer. He did not open any of the beer while on the Carrier's property.

The Organization asserts that the dismissal penalty is much too severe for any minor offense the Claimant might have committed.

After careful review of the hearing transcript this Board has concluded that the charges against the Claimant are indeed supported. The testimony of Foremen Giusti, Triebwasser and Palmiter collectively confirm that he showed signs of alcohol consumption. And the Carrier appropriately relied upon their testimony in reaching its conclusion about the Claimant's guilt. As this Division stated in Award 6251:

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.

The Board also notes that the Carrier submitted no empirical data from a blood test or other clinical procedure to verify the supervisors' conclusion that the Claimant was under the influence of alcohol. However, such evidence is not absolutely necessary to confirm a charge of intoxication. According to Second Division Award 7405:

The effect of excessive alcohol use is well known, and expert verification is not required where the evidence is clearly substantial.

The Board is also persuaded by the testimony of Foreman Giusti to the effect that the Claimant did not emerge from the bar until 12:55 p.m., at which point he was already 35 minutes late for work, before any alleged car trouble could possibly have been discovered. Moreover, the friend who reportedly helped the Claimant jump start his car was not called upon to testify on his behalf.

Finally, in evaluating whether discipline is an appropriate penalty in relationship to the seriousness of the Claimant's offenses, the Board looks to his past work record. He was counseled once in 1978 concerning absenteeism and insubordination and again in early 1979 regarding the use of intoxicants. In March, 1979, the Claimant received a 30-day suspension for absenting himself from his work assignment and indifference to duty.


This Board has consistently held that intoxication on a Carrier's property is a very serious offense. An employee in such a condition creates a safety hazard to himself and to fellow employees as well. In the present case the evidence is wholly supportive of the charges against the Claimant and, in view of his prior work record, dismissal from service is appropriate.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August, 1983.