

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

(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Consolidated Rail Corporation (Conrail) was arbitrary, capricious and unjust in their action of removing Electrician A. J. Johnson, Jr. from the service of Consolidated Rail Corporation (ConRail), on July 3, 1979 in violation of Rule 6-A-1 of the Agreement.
2. That the Consolidated Rail Corporation (ConRail) was arbitrary, capricious and unjust in their subsequent action of dismissal from service of Electrician A. J. Johnson, Jr., on July 28, 1979.
3. That, accordingly, the Consolidated Rail Corporation (ConRail), be ordered to restore Electrician A. J. Johnson, Jr., to service with compensation for all wages lost, along with seniority rights, insurance, vacation and all other benefits unimpaired as outlined in the controlling Agreement.

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 September 20, 1976. On June 25 and 26, 1979, he was assigned as an electrician at the Carrier's Stanley Diesel Terminal in Toledo, Ohio. On the 25th, he was seen by undercover Conrail Policeman Donald Bedra drinking alcoholic beverages while on duty. And, at about 7:26 p.m. Bedra saw him discharge a firearm in enginehouse territory. Also, on June 26, Bedra observed the Claimant smoking marijuana on duty.

The Claimant was notified by a July 3, 1979, letter from W. E. Brooks, Shop Manager, that he was being held out of service in connection with "Violation of Rule 4002 of the Maintenance of Equipment Safety Rules, on June 25 and June 26, 1979."

And, by a July 5, 1979, notice from Brooks, the Claimant was instructed to appear at a trial in connection with the following charges:

- "1) Violation of Rule 4002 of the Maintenance of Equipment Safety Rules in that you were observed drinking alcoholic beverages at Stanley Diesel Terminal at approximately 5:40 p.m., 6:15 p.m., 9:45 p.m. and 10:15 p.m. on June 25, 1979, while you were on duty and under pay as an Electrician at the Stanley Diesel facility.
- 2) Violation of Rule 4002 of the Maintenance of Equipment Safety Rules in that you were observed in Stanley Diesel Terminal, at approximately 4:15 p.m., smoking marijuana on June 26, 1979, while you were on duty and under pay as an Electrician at the Stanley Diesel facility.
- 3) Conduct unbecoming an employee when you had possession of alcoholic beverages in your personal vehicle on company property and said beverages were consumed by yourself and other employees, during your tour of duty, at approximately 5:40 p.m. on June 25, 1979, while you were on duty and under pay as an Electrician at the Stanley Diesel Terminal facility.
- 4) Conduct unbecoming an employee when you were observed participating in unauthorized activity by discharging fire arms in the enginehouse territory while you were on duty and under pay as an Electrician at Stanley Diesel Terminal at approximately 7:26 p.m., on June 25, 1979."

Safety Rule 4002 is quoted in pertinent part below:

"Narcotic medication and/or alcoholic beverages must not be used while on duty or within 8 hours before reporting for duty."

The trial was ultimately held on July 19, 1979, and, by a July 28, 1979, notice from the Carrier, the Claimant was dismissed from service.

The Organization argues that the Claimant's dismissal was arbitrary, capricious, and a flagrant exercise of managerial discretion. It notes that Rule 6-A-1 provides for a fair and impartial trial and restricts occasions where the Company may hold an employee out of service to those where the employee has committed a "major offense". By the Carrier's own admission, the Organization asserts, the Claimant had not committed a major offense on June 25 and 26, and thus should not have been held out of service.

Also, the Organization points out, this case is but one of eighteen following the same pattern. Another employee dismissed for the same alleged violations as those of the Claimant in the instant case was reinstated. This other employee was a Foreman, and to reinstate him without reinstating the Claimant here is a perversion of justice.

The Organization also finds it hard to believe that Bedra would have allowed the alleged incidents to continue without immediately notifying an officer of the Carrier. Furthermore, the Organization notes, Bedra was about one hundred feet away from the Claimant when he reportedly saw him drinking with other employees. He testified that there were "three or four" cases of beer in the

back of the Claimant's truck. Why, if he could see well enough to determine the Claimant was drinking alcoholic beverages, could he not tell if there were three cases or four cases of beer? Thus, Bedra's testimony is based upon speculation, not fact. In support of the Organization's position, no beer cans or rifle was produced as evidence. And finally, the Organization argues, Bedra's simple statement that he smelled what he thought was marijuana is not sufficient proof that the Claimant or anyone else was smoking it.

The Carrier maintains that testimony elicited at the trial clearly establishes that, on the dates and times stated in the charges, the Claimant was drinking beer, had beer in his personal vehicle, discharged a rifle in enginehouse territory, and smoked marijuana. And, the Carrier argues, in view of the seriousness of any one of these offenses, discharge from service is not an inappropriate penalty.

After careful study of the record in this matter, the Board has concluded that it supports the charges against the Claimant. Bedra's testimony was straight-forward and detailed, in contrast to that of the Claimant, which essentially consisted of a flat denial of the charges. Thus, the Carrier's reliance on Bedra's testimony as a confirmation of the charges seems reasonable.

Furthermore, we find no fault in the Carrier's short delay in holding the Claimant out of service. There were apparently seventeen other employees involved in these and related incidents, and it does not seem unreasonable for the Carrier to protect the service until such time as replacements could be arranged. Moreover, Rule 6-A-1 does not mandate that the Carrier immediately hold an employee out of service when a major offense has been committed; rather, it states an employee suspected of such "may" be held out of service pending trial and decision. The decision to do so or not is the Carrier's, provided inordinate delay does not result. In the instant matter we believe the length of the delay between the Claimant's offenses and his being held out of service was reasonable.

With respect to the Organization's argument that the Claimant was discriminated against since a Foreman guilty of the same offenses was reinstated to another position, we do not have sufficient information in the record before us to make a judgment.

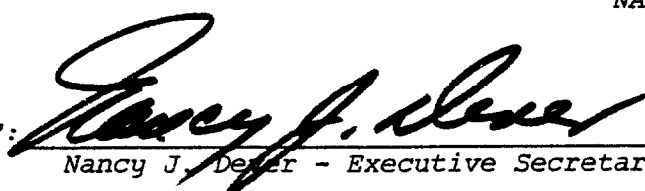
We have considered the Organization's additional procedural arguments as well, but find them to be without merit.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1983.