

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
( Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer Albert E. Lyons was unjustly dismissed from service of the Carrier following trial held on September 18, 1980.

2. That, accordingly, the Carrier be ordered to make the aforementioned Albert E. Lyons whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten [10%] percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of 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 employes 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, Mr. A. E. Lyons, was removed from service as a Laborer at the Carrier's Collingwood Diesel Terminal at approximately 8:00 P.M. on August 29, 1980. Mr. Lyons was later charged with a violation of Conrail Safety Rule 4002 and Rule "G" relating to 8:00 P.M. on August 29, 1980. A trial was held on September 18, 1980; and a notice of discipline dated October 6, 1980 informed Mr. Lyons that he was dismissed from the service of the Carrier as a result of having been found responsible for the violation of Safety Rule 4002 and Rule "G" on the evening of August 29, 1980.

We have considered the contentions of the Organization set forth in its Submission to the Board, and we are compelled to find that they are without merit.

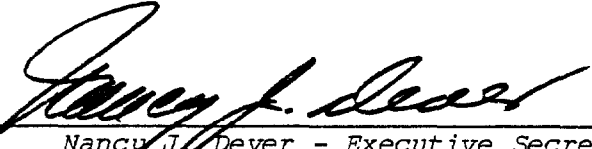
Substantial evidence of record supports the Carrier's finding of responsibility for violation of Conrail Safety Rule 4002 and Rule "G". The evidence shows that at approximately 8:00 P.M. on August 29, 1980, Mr. Lyons was one of six employees found in the P-I-A downstairs locker room-bathroom by three Carrier officials who were acting on a prior report that there was drinking going on in the washrooms. A trash can in the washroom had approximately twenty empty beer cans in it. While three of the individuals were observed holding beer cans in their hands, Mr. Lyons was not so observed holding a beer can in his hand nor was he observed actually drinking beer. However, Shop Superintendent C. Waller testified that he smelled alcohol on the person of Mr. Lyons; and that there was no doubt that the smell of alcohol was coming from Mr. Lyons' breath. Shop Superintendent Gustavson testified that Mr. Lyons' breath smelled that he had just consumed beer, and that Mr. Lyons' eyes were glassy. Assistant Shop Manager Haas testified that he smelled alcohol on Mr. Lyons' breath, and that his eyes appeared glazed. This Board has on numerous occasions held that observations of witnesses as to what they smelled and observed concerning sobriety or the consumption of alcoholic beverages is probative evidence. In the instant case three witnesses testified that Mr. Lyons' breath smelled of alcohol with two witnesses testifying that Mr. Lyons' eyes were glassy or glazed. This is substantial evidence of record to support the Carrier's finding of responsibility for the rules violations. Rule "G" is a dismissal offense. Mr. Lyons had approximately four years of service at the time of his dismissal. We cannot find that the discipline of dismissal was arbitrary, capricious, unjust or excessive.

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 1st day of February, 1984