

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers, AFL-CIO
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist K. R. Clay to service and compensate him for all pay lost up to time of restoration to service at the prevailing machinist rate of pay.

2. That machinist K. R. Clay be compensated for all insurance benefits, vacation benefits, Holiday benefits and any other benefits that may have accrued and were lost during this period in accordance with Rule 7-A-1 (e) of the prevailing agreement effective May 1, 1979.

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.

Claimant K. R. Clay was a Machinists in Carrier's employ at its Collingwood Diesel Terminal. On August 29, 1980 at about 8:00 P.M., he was observed by Company officials with five other employes in the washroom of the refuel station office. Claimant, as well as the other employes, had a can of beer in his hand. There also were empty beer cans in the trash can. Claimant and the others were taken out of service and charged with violation of Contract Safety Rule 4002 and Rule G. A hearing into the matter was held on September 18, 1980. A transcript of that hearing has been made a part of the record of this case. A review of that record reveals that Claimant was afforded a proper hearing and that he was guilty of the rule violation cited.

The record of this case is clear on the point that no one saw Claimant drinking beer. That point, however, is not dispositive of the charges based on other testimony given. According to that testimony, he had a can of beer in his hand, his eyes were glassy, and he smelled of beer. These facts appear to be uncontroverted on the record and they alone are sufficient to find Claimant guilty as charged. But given the facts of this particular record and decisions rendered by this Board involving some of the other employes involved in this incident, this Board is inclined to reduce the penalty of discharge to a suspension of time held out of service.

This Division has decided two cases of employes who were involved in the same incident. In Award No. 9559, the Board upheld the dismissal of D. C. Johnston, an Electrician. That award does not give the Referee in this case any facts that can be compared to facts in the record before him. Other than the statement that Rule G violations are dischargeable offenses and that Claimant was found guilty of a Rule G violation, no facts concerning the individual case were presented in the award.

In Award No. 9528, this Division reduced the penalty of dismissal of Machinists D. S. Swanseger to a suspension of time held out of service. We see little if any difference in the acts as stated in Award 9528 and the facts we find in the record before us. We therefore, will reinstate Claimant with seniority intact but without pay for lost time or benefits.

A W A R D

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever -Executive Secretary

Dated at Chicago, Illinois, this 7th day of March, 1984