Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10064
Docket No. 10078
2-MC-FO-'84

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 and Oilers
(Maine Central Railroad Company

Dispute: Claim of Employes:

1. That, in violation of the current agreement, Laborer Ralph R. Foster, Jr. was unjustly dismissed from service of the Carrier following hearing held on November 20, 1981.

2. That, accordingly, the Carrier be ordered to make the aforementioned Ralph R. Foster, Jr. whole by restoring him to Carrier's service, with seniority rights unmpaired, 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 10% 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.

Claimant Ralph R. Foster, Jr. entered Carrier's service in 1978 and, at the inception of this dispute, was working in that position at Carrier's Bangor Engine House on the 11:00 p.m. to 7:00 a.m. shift.

On November 12, 1981 the Carrier sent Claimant a letter confirming a prior verbal directive stating that he was suspended from service pending investigation on November 12, 1981, in connection with the charge that Claimant violated Rule "G" and Rule 707 when reporting for duty approximately one hour and 20 minutes late and unfit for service. The Rules provide as follows:

"Rule G. Employees subject to duty, reporting for duty, or while on duty, are prohibited from possessing, using, or being under the influence of alcoholic beverages, intoxicants, narcotics, depressants, stimulants, hallucinogens, cannabis, or a derivative or combinations of any of these, including medication which may cause drowsiness or impair the employee's responsiveness.."

"Rule 707. Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty..."

As a result of the investigation, Claimant was discharged on November 30, 1981.

The record in this case reveals that Claimant reported for work at approximatley 12:30 a.m. on November 12, 1981, approximately one and one-half hours late. Witnesses testified that his condition was unsteady, his speech slurred, and there was an odor of alcohol on his breath. Claimant admitted that he had had several drinks at approximately 9:30 p.m., but denied that he was intoxicated. Testimony further indicates that Claimant was offered, but refused, a breath test to determine whether he was intoxicated. Claimant denies that there was any discussion regarding a breath test, and states that he was late because he had to hitchhike to work that evening.

The Organization contends that Carrier failed to afford Claimant a fair and impartial hearing because he was not provided proper notice of the charges preferred against him. Moreover, the Organization asserts that the Claimant's due process rights were violated when one Carrier witness was given the opportunity to direct questions to another Carrier witness at the hearing. Finally, the Organization argues that the dismissal was arbitrary, capricious and an abuse of managerial discretion.

With regard to the Organization's procedural and due process claims, it is well established that since these arguments were not raised on the property, the Board lacks the authority to consider such arguments at this level for the first time. (See this Division's Awards Nos. 7122, 7196, 7484, 7853.)

The substantive questions in this dispute turn on a credibility determination regarding Claimant's alleged intoxicated state. Numerous prior awards show that this Board is restricted to searching the record for substantial evidence, and we cannot resolve conflicts in testimony. (See Second Division Award 7325.) Herein, several witnesses testified that Claimant's behavior indicated that he was intoxicated. Claimant himself admits that he had been drinking earlier that evening. Further, it is undisputed that Claimant was late for duty on the date in question. Thus, the hearing officer could legitimately conclude that the consistent testimony of the Carrier witnesses was closer to the truth than Claimant's self-serving denials. On the merits, then, the Board is satisfied that there was substantive evidence of probative value to support the charges that Claimant was intoxicated and did not timely report for duty. The decision of the Carrier to dismiss Claimant under these circumstances was neither arbitrary nor capricious. (See this Division's Awards Nos. 6249, 6373). Therefore, we will deny the claim.

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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 5th day of September, 1984.