

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. That under the current Agreement, Mechanical Department Electrician C. V. Restivo was unjustly treated when he was dismissed from service on February 1, 1982, following investigation for alleged violation of portions of Rule 801 and Rule "G" of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines). Said alleged violation occurring on February 1, 1982.
2. That accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to restore Electrician C. V. Restivo to service with all rights unimpaired including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages including interest at the rate of six percent (6%) per annum.

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.

On February 4, 1982, Claimant C. V. Restivo was notified of a formal hearing on February 9, 1982, to investigate a charge of possible violations of Rule "G" and Rule 801 of the Carrier's General Rules and Regulations.

Rule "G" provides in part:

"The use of alcoholic beverages, intoxicants or narcotics by employes...or their possession, use or being under the influence thereof while...on Company property, is prohibited..."

Rule 801 states in pertinent part:

"Employes will not be retained in the service who are... quarrelsome or otherwise vicious... Any act of hostility, misconduct...affecting the interests of the Company is sufficient cause for dismissal..."

On the evening of February 1, 1982, at approximately 11:30 p.m., Claimant was found sleeping in the cab of locomotive SP8818 by several Carrier employees. Claimant was awakened by Carrier personnel, and instructed to leave the property. Claimant failed to respond or react to this request, and the Carrier's Police were summoned to remove Claimant from the cab.

The record reveals that the Carrier's Police first attempted to remove Claimant from the cab by verbal request. When Claimant failed to respond to their verbal request, both Officers on the scene attempted to physically remove Claimant from the engineer's seat. At this point Claimant became combative, and threw the female Police Officer around the inside of the cab. Claimant kicked, or attempted to kick, both Police Officers before they were able to subdue him. The Officers testified to the odor of alcoholic beverage upon Claimant's breath or person, and a cup of liquid which smelled of alcohol was located within the cab upon Claimant's removal.

Claimant testified in his own behalf at the investigation, and admitted that he was drinking in violation of Rule "G". As to the charge of violating Rule 801, Claimant testified he could not say exactly what happened the night of February 1, 1982 other than his admission that he was under the influence of alcohol.

The Organization's claim that the Carrier acted in an arbitrary and capricious manner by discharging the Claimant is without merit. There is sufficient credible evidence that Claimant violated the prohibition contained in Rule "G" by his own admission of being under the influence while on the Carrier's property. Rule "G" is of singular importance in the railroad industry. It exists for the protection of property, employees and the public at large. Employees are well aware of the severity of any violation of a rule which exists as much for their protection, as it does for anyone else.

There is absolutely no basis for the contention that Claimant's violent actions toward the Police Officers were taken in reasonable fear for his personal safety. Claimant's violent reaction to the Carrier's Police Officers was not the result of his acting in self defense, but rather a by-product of his alcoholic state. His very actions demonstrate the basis for Rule "G".

The Carrier has squarely met its burden of proof that Claimant is guilty of the offenses as charged. In light of Claimant's prior records of excessive absenteeism, the Carrier's discharge of Claimant is neither arbitrary, unreasonable nor unjust.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this