

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10757
Docket No. 10828
2-AT&SF-SMW-'86

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

(Sheet Metal Worker's International Association
Parties to Dispute: (
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That The Atchison, Topeka and Santa Fe Railway Company violated the controlling agreement, particularly Rule 40, when they unjustly dismissed Sheet Metal Worker W. H. James from service on July 29, 1983, following investigation held on July 22, 1983, Clovis, New Mexico.

2. That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to change Sheet Metal Worker James record from "dismissed" to show his status as being "furloughed" since Sheet Metal Worker James was due to be furloughed effective July 1, 1983.

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 June 28, 1983, the Claimant was notified to attend formal investigation to develop the facts and place responsibility, if any, in connection with his allegedly being under the influence of intoxicants when subject to duty, or while on duty on June 27, 1983, in alleged violation of Rules 2, 6 and 16, Form 2626, General Rules and the Guidance of employes, 1978 edition. The investigation was accorded on July 22, 1983.

The Claimant was represented at the hearing and he had no witnesses present.

The Rules cited in the investigation notice were read into the record at the beginning of the investigation. Rule 6, the principal Rule referred to in the interrogation reads:

"The use of alcoholic beverages, intoxicants or narcotics by employes subject to duty, or their possession or use while on duty, or on Company property is prohibited.

Employes must not report for duty under the influence of any drug, intoxicant, medication or other substance (including those prescribed by a doctor or dentist) that will in any way adversely affect their alertness, coordination, reaction, response, or safety. No such drug, intoxicant, medication or other substance may be used by employes on duty or while on Company property."

In the sequence that led to the investigation, the Carrier's Diesel Gang Foreman, Clovis Roundhouse, Mr. Gary F. Ward, was on a special assignment in the roundhouse making a time study in connection with Sheet Metal Workers' activities. The Foreman was assigned to the Claimant to record his activities. The Claimant reported for his assignment at 11:00 P.M. and at approximately 11:30 P.M., in conversation with the Claimant, the Foreman detected a strong odor of alcohol on his breath. The Foreman testified that he asked Roundhouse Foreman Hall to talk to the Claimant to confirm his suspicions. At approximately 11:50 P.M. the two Foremen took the Claimant into the Assistant Trainmaster's Office and there in the presence of the Assistant Trainmaster and the two Foremen the Claimant admitted he had been drinking one or two beers prior to coming to work. The Claimant was asked to blow his breath in the face of each of the Supervisors and all three confirmed that there was a strong smell of alcohol. Thereafter the Claimant was informed he was being sent home. The record indicates he punched out on the time clock at 12:10 A.M. and immediately left the property after being escorted therefrom.

The Diesel Gang Foreman was asked by the Investigating Officer if he noticed any erratic behavior on the Claimant's part, to which he responded:

"I thought I detected a difference in the manner of his speech compared with other days that he had worked for me. It seemed as his speech was a little bit, maybe slurred or - it just seemed different to me."

The Foreman then testified that the Claimant was not belligerent or argumentative in any way; that he was cooperative.

In his testimony, the Claimant stated that he was not under the influence of alcoholic beverages while on duty and that he was not drunk on July 27, 1983. When asked if he had used or consumed alcoholic beverages while subject to duty on that date, his response was that he drank "a couple of beers about two and a half hours before time for me to come to work. That is all I had dranked."

In the closing moments of the investigation, the Claimant's representative stated that he had further questions for the Claimant. His questions and the Claimant's response were:

"Q. Mr. James, did you have this beer with your meal or under what conditions did you consume the beer?

A. Well, I's at home and I couldn't sleep and usually I drink beer to relax me and I had been up all day and so I drank the beers to relax me, to try to get a nap in before time to come to work."

Thereafter there was no further testimony and the investigation was closed.

In letter dated July 29, 1983 the Claimant was notified that it was the decision of the Investigation Committee that he be removed from service for violation of Rule 6 and 16. The Claimant's representative, member of the Investigation Committee, rendered his dissenting decision as follows:

"Due to Mr. James admission that he did violate Rule 6, I would like to recommend suspension rather than dismissal. Therefore, I dissent from this decision."

In support of its position, the Petitioner has relied on Award No. 7187, Second Division. There the Claimant has performed his normal work for four hours, during which the majority found that no evidence was presented to indicate that the Claimant there was "under the influence." And no evidence such as inability to follow instructions, unsteady gait or simply laying down on the job and then drew a parallel as to an employee reporting for work after consuming an enormous, highly spiced meal, with his breath being revolting but his work unaffected. The Claim in the Award was sustained.

The Petitioner offered a similar hypothesis here, stating that beer contains fermented grain, yeast and hops, each of which has a very pungent odor that takes a period of time to leave one's breath; and, also, that the amount of beer the Claimant consumed some two to two and one half hours before going on duty did not contain sufficient alcohol to in any way hamper his usual demeanor.

Award 7187 is readily distinguished, for here the Claimant was on duty approximately 30 minutes when the Foreman for whom he worked detected the odor of alcohol on his breath and testified that he detected a difference in the manner of his speech compared with other days that he had worked for him.

As stated in Third Division Award 20100:

"the degree of impairment is not essential, and the Board will not condone the performance of work by those under even the slightest alcoholic impairment."

With its responsibility to the public, Railroads have generally and quite properly considered the use of intoxicants to be an extremely serious offense.

In reality, the record developed by the Claimant's own testimony and his local representative's acknowledgment that the Claimant did admit violation of Rule 6 substantially corroborates the charges placed against him.

The record discloses that the Claimant was removed from service on July 20, 1982 for drinking on duty and reinstated on a leniency basis three months later. It was just eight months later that he was again involved in the use of alcohol while subject to duty or on duty as outlined in this case. He had also accumulated 100 demerits for other irregularities.

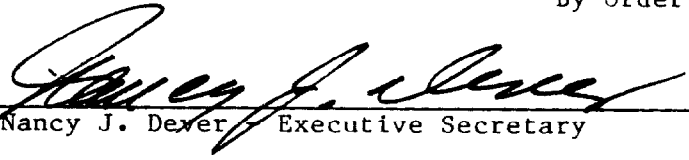
Dismissal is appropriate under the Rules for this infraction. We find that imposition of this form of discipline in this case was neither arbitrary, nor capricious, nor unjust given due and proper consideration the the record as a whole.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dexter, Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.