

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11238
Docket No. 11286
2-IHB-SMW-'87

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(Sheet Metal Workers International Association

Parties to Dispute: (

(Indiana Harbor Belt Railroad Company

Dispute: Claim of Employes:

1. The Carrier violated the provisions of the current controlling agreement when they improperly dismissed Sheet Metal Worker M. G. Hedrick from service, effective July 15, 1985, as a result of an investigation held on July 23, 1985 at Hammond, Indiana.

2. That accordingly, the Carrier be required to restore Mr. Hedrick to service with all seniority rights unimpaired; make Mr. Hedrick whole for all vacation rights; reimburse Mr. Hedrick and/or his dependents for medical and dental expenses while improperly held out of service; pay to Mr. Hedrick's estate whatever benefits he has accrued with regards to group life insurance for all time improperly withheld from service; pay Mr. Hedrick for all contractual holidays; pay Mr. Hedrick for all jury duty and for all other contractual benefits; pay Mr. Hedrick for all back pay while improperly 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.

Following an Investigation conducted on July 23, 1985, in which Claimant, a Sheet Metal Worker with about seven years of service was charged:

"In that at approximately 7:20 p.m., July 15, 1985, you were found to be under the influence of alcoholic beverage, which is a violation of Safety Rule 4010, and in an unauthorized area 'C & J' Liquor Store."

Claimant was dismissed from service effective July 15, 1985.

A copy of the Transcript of the Investigation conducted on July 23, 1985, has been made a part of the record. The Investigation was conducted in a fair and impartial manner. Claimant was present throughout the Investigation and was represented. Two statements were taken in the Investigation, one from Claimant and one from his Supervisor.

The Supervisor testified that he was positive that he smelled beer on Claimant's breath at about 7:20 P.M., July 15, 1985, when he was standing shoulder to shoulder with him; that he told Claimant that he suspected him of drinking, and asked Claimant if he would submit to a test, and Claimant stated that he would; that he escorted Claimant to St. Margaret Hospital, where it was determined that the test would of necessity, be a blood test. Claimant declined to submit to a blood test, indicating to the Supervisor and the hospital staff that he was afraid of needles. The Supervisor went on to state that he told Claimant that he could refuse to take the blood test; that he returned to the Roundhouse with Claimant and removed Claimant from service about 9:30 P.M., pending an Investigation. He stated further that Claimant told him, on the way to or from the hospital, that he had gone to the C & J Liquors to buy a can of snuff, and that C & J Liquors was an unauthorized area for employees to be in while on duty. He reiterated that he was positive that Claimant had been drinking while on duty.

The Claimant denied that he had been in C & J Liquors on July 15, 1985; denied telling the Supervisor that he had gone to the liquor store; stated that he told the Supervisor that he had not been drinking on July 15, and that he agreed only to "a urine test," that he told the Supervisor while at the hospital that he would take a urine test but not a blood test "Because I can't stand needles." He went on to state that he understood from the Supervisor before going to the hospital that he would only have to submit to a urine test.

The Board has held on numerous occasions that laymen may determine when an employe is under alcoholic influence. (Second Division Awards 8807, 5704.)

The Board is faced with conflicts in testimony between the Supervisor and the Claimant. Numerous Awards have been issued to the effect that the Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses, such functions being reserved to the Hearing Officer. Conflicts in testimony do not warrant overturning the action of the Carrier.

Carrier's Maintenance of Equipment Rule 4010, reads in part:

"Narcotic (medication or drug) and/or alcoholic beverage must not be used while on duty, or within 8 hours before reporting for duty."

We hold that the Carrier could properly rely upon the testimony of the Supervisor in the present case. We find that discipline was warranted; however, under the circumstances herein we find that permanent dismissal was excessive. We will award that Claimant be restored to the service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service.

Form 1
Page 3

Award No. 11238
Docket No. 11286
2-IHB-SMW-'87

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
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of April 1987.