

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(International Brotherhood of Electrical Workers  
Parties to Dispute: (  
(Port Authority Trans-Hudson Corporation

Dispute: Claim of Employees:

1. That under the current Agreement the Port Authority Trans-Hudson Corporation (PATH) unjustly dismissed Power Railman Bruce Piechocki effective June 28, 1985.

2. That accordingly the Carrier be ordered to restore Power Railman Bruce Piechocki to service with seniority unimpaired and with all pay due him from the first day he was held out of service, at the applicable Power Railman's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge his record.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 were given due notice of hearing thereon.

At the relevant time, Claimant had 11 years of service with the Carrier. As a result of charges dated July 9, 1985, Hearing on July 18, 1985, and by letter dated August 6, 1985, Claimant was dismissed from service.

The record is undisputed. Claimant was entrusted with payroll checks belonging to three other employees. Claimant forged the names of two of the employees on their respective checks, cashed those checks without permission of those employees and kept the proceeds.

Our review function does not involve a substitution of our judgment for that of the Carrier or a de novo determination of the facts or merits of the case. It is well established that we are confined to determining whether substantial evidence exists in the record to support the Carrier's decision that discipline should be imposed and if substantial evidence is found, then we can only set aside the discipline in the event that it is shown that the Carrier was arbitrary, discriminatory, capricious or abused its discretion. See e.g. Third Division Award 26207.

Rule 7 prohibits dishonest or illegal acts. Claimant committed theft and forgery. Thus, more than substantial evidence in the record supports the Carrier's determination that Claimant violated Rule 7. Indeed, Claimant does not contest the allegations made against him.

The Organization contends, however, that Claimant is a compulsive gambler and has received treatment for such illness. According to the Organization, Claimant should be afforded the same consideration that the Carrier has given alcoholics and drug abusers who have caused greater damage to the Carrier than Claimant did in this case. Thus, the Organization's argument goes to the alleged arbitrary or discriminatory action by the Carrier in assessing dismissal as a penalty.


Upon consideration of the record, we must reject the Organization's position. First, we note that the record is devoid of any evidence beyond the mere assertion that the Carrier has treated employees suffering from alcoholism or drug addiction differently than Claimant. Nor is there any evidence that an employee suffering from alcoholism or drug addiction was charged with theft or forgery and treated differently than Claimant. Second, even assuming that the Organization is correct and that compulsive gambling is a recognized illness and that alcoholics and drug abusers have been disciplined short of dismissal as a result of their condition, we note that Claimant has not been charged with the symptoms of his illness, i.e., gambling. Claimant has been charged with and has admitted to theft and forgery. The analogy drawn by the Organization is to an individual who is suffering from alcoholism or drug addiction and is then disciplined as a result of his asserted illness (for example, for working under the influence or being in possession and then being charged with those acts.) Such is not the case herein. Under the circumstances, we do not believe the analogy to be appropriate to the facts presented in this case. Therefore, we cannot say that evidence or reason exists in this record for us to conclude that the Carrier was either arbitrary, discriminatory, capricious or abused its discretion.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1987.