

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11971
Docket No. 11924
91-2-90-2-31

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

1. That the Union Pacific Railroad Company violated the controlling agreement, particularly Rule 21(h), when they unjustly dismissed Electronic Technician R. B. Erickson from service on November 21, 1988, following investigation begun on October 13, 1988, and then postponed to October 28, 1988, and held and concluded on November 15, 1988, at Salt Lake City, Utah.

2. That accordingly the Union Pacific Railroad Company be ordered to compensate Mr. Erickson as follows:

- a) Compensate him for all time lost beginning November 21, 1988, and continuing until returned to service;
- b) Make him whole for all insurance benefits;
- c) Railroad Retirement benefits;
- d) Make him whole for all vacation rights;
- e) Seniority rights unimpaired;
- f) Make him whole for all other benefits he would have accrued had he been working.

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.

The Claimant was an Electronic Technician employed by the Carrier at Ogden, Utah. At about 7:10 P.M. on September 7, 1988, the Claimant while operating his personal vehicle on 12th Street, a public thoroughfare, collided with Carrier's signal equipment. The Claimant was arrested and charged with "Driving Under The Influence" and "Fleeing The Scene Of An Accident." On November 1, 1988, the Claimant pleaded guilty to driving under the influence. That part of the charges "Fleeing The Scene Of An Accident" was dropped. The Claimant was subsequently sentenced to twelve months probation plus court costs and a \$750.00 fine in addition to a 120-day jail sentence of which 90 days was suspended.

Under date of October 7, 1988, the Claimant was notified in part, as follows:

"- - - -

Please report to Communciations Conference Room, 81 North 400 West, Salt Lake City, Utah, for investigation and hearing on Thursday, October 13, 1988, at 1:30 p.m., on charges that you allegedly engaged in conduct unbecoming an employee in connection with your arrest on September 7, 1988, on charges of 'Driving Under The Influence,' and 'Fleeing The Scene Of An Accident' damaging Company property on September 7, 1988, at approximately 7:10 p.m., 12th. Street and railroad crossing when you collided with signal equipment while operating your personal vehicle causing approximately \$6,500 damage to such equipment, and were on Company property under the influence of alcohol on September 7, 1988. This, in violation of General Rules B, G, L, 607 and 609 of Form 7908, 'Safety Radio And General Rules For All Employees.'"

The Investigation began on October 13, 1988, and during the course of the Investigation it was rescheduled and was concluded on November 15, 1988. On November 21, 1988, the Claimant was notified that he was dismissed from service having been found guilty of violating Rules G and 607.

We have reviewed the Investigation testimony and find that the Claimant received a fair and impartial Hearing.

The Organization argues that there were procedural defects in that the charges were not precise and that waiting one month before bringing charges was improper. The Organization in addition brings out the fact the Claimant was not on duty at the time of the incident. We do not agree with the Organization that the charges were not precise. We find that the charges were sufficiently clear and detailed so as to enable the Claimant to prepare a defense. The Discipline Rule is silent as to how soon an investigation must be held. Given the nature of the charges in this case we do not consider the delay in this case to be unreasonable or to be in violation of the Rule.

The Carrier argues that the evidence adduced at the Investigation conclusively established that the Claimant was guilty of violating Rules G and 607. Rule G prohibits the use of alcoholic beverages by employees subject to duty, when on duty, or on Company property. Rule 607 pertains to conduct of employees and includes the mandate that employees must not be immoral and prohibits conduct leading to conviction of any misdemeanor involving moral turpitude.

We have scrutinized the Investigation testimony and cannot find where the Claimant was guilty of violating Rule G. No evidence whatsoever was introduced at the Hearing that would substantiate that the Claimant on the date of the incident was subject to duty, was on duty, or was on company property. We, therefore, find the Claimant not guilty of the charge of violating Rule G. With respect to violating Rule 607, we believe that the language in the Rule is broad enough to cover an employee who is guilty of driving under the influence. We therefore find that the Claimant did violate Rule 607.

We now turn to the discipline that was assessed in this case, i.e., dismissal. The Claimant was not guilty of violating Rule G, which pertains basically to employees who use alcohol while on duty or on company property. This Board is not in a position to determine how much weight the Carrier gave to the violation of Rule G (Carrier's conclusion) when determining the amount of discipline to assess. Normally a violation of Rule G alone is considered to be a very serious matter and in many cases results in dismissal.

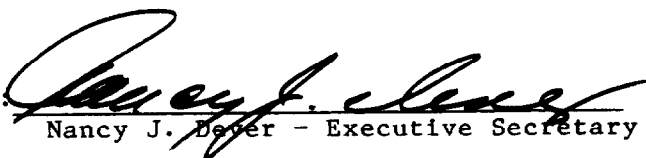
The Claimant having been punished by civil authorities for his wrong doing while off duty, we are of the opinion that the action of permanent dismissal by the Carrier in this instance (violation of Rule 607 only) was too harsh a penalty. We believe a one-year suspension would have been more appropriate discipline under the circumstances. Accordingly, it is the Board's decision that Claimant shall be returned to service with his seniority rights unimpaired. For the period of time beginning November 21, 1989, and ending on the date the Claimant is returned to service he shall be compensated for any wage loss in accordance with the terms of the Agreement. Claims for benefits which are not specifically provided for in any existing Agreement are declined.

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 - Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1991.