

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

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(
(CSX Transportation, Inc.
(Former Baltimore and Ohio Railroad)

STATEMENT OF CLAIM:

1. That under the current agreement, Sheet Metal Worker Robert H. Wagoner was unjustly discharged from service on March 1, 1989.

2. That accordingly, the Carrier be required to reinstate the aforementioned employee to service with all rights unimpaired, including seniority, vacation, health and welfare benefits, life insurance and that he be made whole for all time lost.

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 employed in the Carrier's Work Equipment Department at Fairmont, West Virginia. On January 31, 1989, the Claimant while on duty and driving a Carrier-owned vehicle was involved in an accident at approximately 9:30 P.M. The Claimant after undergoing a breathalyzer test was arrested at the scene of the accident for driving while under the influence of alcohol. The Claimant's blood alcohol level was .187. In West Virginia, as in many states, an individual is considered legally drunk if his blood alcohol level shows .10 or above. The Claimant did not return to work thereafter, apparently on advice of an attorney.

Under date of February 13, 1989, the Claimant was notified to attend an Investigation on February 23, 1989. He was charged with conduct unbecoming an employee, responsibility, if any, for damage to company vehicle, and being away from assigned position. Investigation was held on February 23, 1989. The Claimant was not present at the Investigation, however, he arranged for a representative to represent him at the Investigation. Under date of March 1, 1989, the Claimant was notified he was found responsible as charged and that he was dismissed from the service of the Carrier.

A review of the Investigation testimony indicates it was conducted in a fair and impartial manner. The Claimant's representative at the conclusion of the Investigation indicated he felt that the Hearing was fair and impartial.

The Organization contends the Carrier held the Investigation in absentia and would not take into consideration that the Claimant had been admitted to a hospital for his alcohol related problems on February 21, 1989. There is no basis for this contention. The Claimant's representative stated at the Investigation that he had previously talked with the Claimant and that the Claimant had told him he did not want a postponement and to go ahead with the Investigation. Various Boards have upheld the Carrier's right to hold Investigations when employees do not appear. See Second Division Award 8225 and Third Division Awards 13127 and 20113.

The Organization argues that the Claimant was unjustly disciplined as the result of being found guilty of the charges. The Claimant was found guilty of driving a company vehicle while on duty and under the influence of alcohol and being responsible for damaging the vehicle. Driving while under the influence of alcohol is a very serious matter and it is fortunate that no person was injured in this case, especially in view of the fact the Claimant's blood alcohol level was .187. The Carrier took into consideration the Claimant's past record when determining the measure of discipline to be imposed. Claimant's past record indicated he had participated in an Alcohol Rehabilitation Program in September 1987, and July 1988. In August 1988, the Claimant entered a plea of "No Contest" to charges of "Failure to Control a Motor Vehicle," which was a company-owned vehicle involved in a collision with two other vehicles. We do not agree with the Organization that the Claimant was unjustly disciplined. It is our conclusion that Carrier's action in this case of discharging the Claimant was reasonably related to the offense committed, bearing in mind the Claimant's past record.

A W A R D

Claim denied.

Form 1
Page 3

Award No. 11991
Docket No. 11898
91-2-90-2-2

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1991.