

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12968
Docket No. 12831
95-2-93-2-232

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

(International Association of Machinists
(and Aerospace Workers, AFL-CIO
PARTIES TO DISPUTE: (
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

- "1. That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the 'Carrier') violated the Controlling Agreement, specifically Rule 40, when it wrongfully suspended Machinist Steve L. Bowers (hereinafter referred to as 'Claimant') from service November 2, 1992, pending the results of an investigation at Kansas City, Kansas on November 12, 1992. Claimant was returned to service on a conditional suspension March 4, 1993.
2. That, accordingly, the Carrier reinstate the Claimant to service with his seniority rights unimpaired with the payment of all time lost and all other rights and privileges restored due to his being wrongfully suspended from 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant is employed by the Carrier as a Machinist in its Argentine Facility, Kansas City, Kansas. At the time of the occurrence giving rise to this dispute, Claimant was taking a welding course at the KAW Area Technical School in Topeka, Kansas.

On October 29, 1992, Claimant failed to answer roll call at 8:00 AM. After taking roll call, the Instructor left the shop area. Upon his return at approximately 8:25 AM, Claimant was observed grinding plates at the grinding table.

At approximately 9:05 AM, Claimant approached the Instructor and asked for the sign-up sheet. When asked where he was at 8:00 AM, Claimant became belligerent, responding that he was "only 5 f----- minutes late." When cautioned about his attitude and use of profanity, Claimant responded that he was tired of being treated like "a f----- child." During the exchange, a strong odor of alcohol coming from the Claimant was detected by the Instructor.

Claimant was invited into the Instructor's office for consultation with the school's Industrial Liaison Officer, but while a call was being placed to the Officer, Claimant stormed out of the office, gathered up his personal gear and left the school.

Carrier issued Notice of Investigation to Claimant November 2, 1992, reading in pertinent part:

"Please arrange to report to the Office of Director - Locomotive Maintenance and Inspection Terminal, Argentine, Kansas at 10:00 AM, Thursday, November 12, 1992, with your representative and witnesses, if desired, for formal investigation to develop all the facts and place your responsibility, if any, regarding your allegedly being under the influence of alcoholic beverages or intoxicants and becoming abusive, quarrelsome, hostile, boisterous, use of profane language, indifference to duty and absenting yourself from duty without proper authority with your Welding Class Instructor, at approximately 9:00 AM, October 29, 1992, at the Kaw Area Technical School, in Topeka, in violation of Rules B, G, L, 1004 and 1007 of the Safety and General Rules For All Employees, Form 2629 Std., revised October 29, 1989."

The Investigation was conducted as scheduled. Carrier found Claimant guilty of the charges and dismissed him from service November 30, 1992.

On January 8, 1993, Carrier addressed a letter to Claimant reading in part as follows:

"This is to advise you that as a result of formal investigation held on November 12, 1992, concerning your being under the influence of alcoholic beverages or intoxicants, abusive, quarrelsome, hostile, boisterous, use of profane language, indifferent to duty and absenting yourself from duty without proper authority with your Welding Class instructor at approximately 9:00 AM, October 29, 1992, at the Kaw Area Technical School in Topeka, you are hereby issued a conditional suspension for your infraction of Rules B, G, L, 1004 and 1007 of the Safety and General Rules For All Employees, Form 2629 Std., revised October 29, 1989.

You should acknowledge receipt of this suspension on the space provided below. You should be advised that this suspension is conditional based upon (1) your first-time violation of Rule G; (2) your placing yourself into the Employee Assistance Program; and, (3) your full compliance with the program and with all instructions issued to you by the EAP Counselor. Your suspension will be considered served upon your release back to active service by the EAP Counselor, provided it is within 270 days from the date this suspension commences (October 30, 1992). Failure to receive a favorable recommendation by the end of the 270-day period or failure to abide by the instructions or program set forth by the EAP Counselor will automatically convert this suspension to dismissal."

Claimant promptly accepted the terms of the conditional suspension and placed himself in Carrier's Employee Assistance Program.

On March 3, 1993, Carrier advised Claimant that he had been released by the Employee Assistance Counselor to return to active service subject to the following conditions:

- "1. Agree to totally abide by the Company Policy on use of alcohol and drugs.
2. Maintain a minimum of monthly contact with the E.A.P. Counselor.

3. Attend at least three self-help group meetings, such as Narcotics Anonymous, Cocaine Anonymous, Alcoholics Anonymous, per week for a period of two years and submit valid documentation of such attendance to the E.A.P. Counselor no later than the 10th of each month.
4. Attend therapy sessions as indicated by the E.A.P. Counselor. Current recommendation is weekly After Care at Cedar Ridge Hospital. Individual Out-Patient counseling with Ron Dreier.
5. Agree to periodic unannounced drug screens, for a maximum period of two years.
6. Understand that failure to comply with any of the above provisions will result in immediate medical disqualification."

Claimant promptly accepted the stipulated conditions and returned to active service March 4, 1993.

Subsequent to Claimant entering Carrier's Employee Assistance Program, the Organization filed formal Claim on behalf of Claimant asserting that he had been unjustly removed from service and requesting that Claimant be reinstated to service with seniority and all other rights unimpaired and compensated for his net wage loss. Carrier denied the claim on March 19, 1993, and the claim was filed with this Board in December, 1993, for final resolution.

Procedurally, the Organization asserts that Claimant failed to receive a fair and impartial Investigation account the Investigating Officer refused to permit a witness for Claimant to testify and refused to accept an affidavit from said witness. He also refused to enter statements from three employees into the record.

The affidavit and statements complained of were made a part of the claim handling on the property and submitted to this Board. We have reviewed them and find they are not material to the charges made against Claimant. The three employees were not present on the morning of October 29, 1992, and therefore, not in a position to add to Claimant's defense. The witness affidavit attested to Claimants condition at 7:55 AM, not 9:05 AM when the occurrence giving rise to claim took place. For these reasons, we conclude there was no procedural violation.

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This Board has carefully reviewed the record adduced in this case, including the Transcript of Investigation and find substantial probative evidence to support the charges. On the question of the discipline imposed, we are unable to find it excessive, and we will not disturb the Carrier's decision.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 1st day of November 1995.