

Award No. 2991

Docket No. MW-2947

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Mart J. O'Malley, Referee)

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mason Foreman William Weisenbach be paid at Mason Foreman's rate of pay during the period December 11, 1943 to January 10, 1944, during which period he was erroneously held out of service.

OPINION OF BOARD: Mason Foreman, William Weisenbach was suspended from service on December 11, 1943 and charged with a violation of Rule 'G' which is as follows: "The use of intoxicants or narcotics is prohibited."

Hearing was had at Lafayette, Indiana on December 21, 1943. At the hearing, the Claimant and Mr. Hill were the only witnesses examined, and their testimony constitutes all the evidence given in the matter. In that hearing, it was disclosed that the Claimant had worked for the Carrier thirty-five years and had never before been charged with any violation of rules. He stated that on the day in question he had finished his work for the week and had gone to the office of Mr. Self to discuss a question concerning salary; that being unable to see Mr. Self he started to go back to the yard where the cars were located; that on the way back to the Taylor Street Yard where the cars were located, he stopped at a tavern and drank one glass of whiskey and one glass of beer; that this did not make him intoxicated and that he retained his faculties; that while he was a monthly man so-called, he was not on the pay roll or working on that day.

Mr. Hill stated that he had known Claimant a long time, and that he never saw him use intoxicants on railroad property and never saw him under the influence of liquor. It may be mentioned that Mr. Hill was an official of the Carrier, superior to the Claimant.

We are in accord with the pronouncement which has been made time and again to the effect that the carrier has the right to prohibit the use of intoxicants in or around its property; that it has the right to insist that its employees do not report for duty while under the influence of liquor; that it has the right to protect its business from the effect of drinking. We are also in accord with the many awards of this Board which say that unless the carrier acts arbitrarily, capriciously or without regard to the fundamental rights of the claimant, its action will not be disturbed in case of disciplinary action.

It is not our function to weigh the evidence. That is for the trier of facts. However, it is our function to examine the evidence to determine whether or not there is evidence to support the action of the carrier.

In this dispute, we are confronted with a record where the evidence is not contradictory. It may be that the Carrier considered something which was observed by the officers on the property; it may be that the hearing was influenced

by the actions of the Claimant when he was talking to Mr. Self. If that is so, no evidence of that kind was offered. We are bound by the evidence given at the hearing. From that evidence, all reasonable men must conclude that there was no use of intoxicants on the property of the Carrier; there was no intoxication; there was nothing which in any way would or could affect the Company business.

It is asserted that the Carrier had the right to employ persons who were non-drinkers, and who would continue to be non-drinkers. Granting that right to the Carrier, we are confronted with a total absence of evidence on that subject.

It is not necessary to determine how far a carrier may go under Rule 'G'. In this particular case, the only evidence is that two drinks were taken off the property, when a man was off duty, and not shown subject to call and even if subject to call, he had his faculties unimpaired.

In this state of the record, we must sustain the claim. See Awards No. 261, 262, Second Division.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the disciplinary action of the Carrier was unwarranted, and in violation of the fundamental rights of Claimant because of insufficient evidence of a violation of Rule 'G'.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 26th day of November, 1945.