

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the effective agreement when they dismissed Section Foreman R. A. Price, Columbia Division, Union, South Carolina, from service on June 9, 1950;

(2) That Section Foreman R. A. Price be restored to service with seniority and vacation rights unimpaired and compensated for all wages lost subsequent to February 21, 1951.

OPINION OF BOARD: This is a discipline case in which claimant, Section Foreman R. A. Price, Columbia Division, Union, South Carolina contends he was improperly dismissed from Carrier's service. He asks to be restored to service with seniority and vacation rights unimpaired and that he be compensated for all wages lost since February 21, 1951.

Claimant was charged with violation of Rule "G" and conduct unbecoming an employe in Union, South Carolina on June 3, 1950. Hearing was held on June 8, 1950 and claimant was found guilty of the charges against him and dismissed from the service of the Carrier. Claimant contends the dismissal was unfair and without good and sufficient reason.

Rule 23 of the parties' effective Agreement provides, as far as here material, as follows: "An employe who has established seniority will not be disciplined or dismissed without a fair and impartial hearing, * * *." Claimant has been in the service of this Carrier since December 5, 1911 with the classification of Section Foreman since March 14, 1914. He has been a Section Foreman at the Columbia Division since April 10, 1918, the latter being his rating at the time of his dismissal from service. It also provides for notice stating the nature of the charge or charges against him, which means that he cannot be disciplined or dismissed without just cause.

Rule "G" is as follows: "The use of intoxicants or narcotics at any time is detrimental to good service and is cause for discipline. Employees who indulge in the use of an intoxicant or narcotic while on duty, or who report for duty while under the influence of either, will be dismissed."

Claimant was a monthly rated supervisory employe subject to call at any time on his rest days, which were Saturday and Sunday, unless he had permission to be away. This permission he did not have on Saturday, June

3, 1950. On that date, between 5 and 6 P.M. he was arrested by the civil authorities of his home town of Union and charged with being drunk. He stayed in jail most of that night and then was released by putting up a \$10.00 bond, which he forfeited. The evidence establishes he had been drinking prior to his arrest.

In view of certain contentions made by the parties hereto, it becomes necessary to make certain observations with reference to Rule "G". This Rule provides that employes drinking intoxicating liquor while on duty or who report for duty while under the influence thereof will be dismissed, whereas; the use thereof at any time shall be cause for discipline which may range from merely a reprimand up to and including dismissal. In this latter regard, when the use of intoxicating liquor is legal, it is an unreasonable exercise of authority for Carrier to attempt to prevent the use thereof by its employes when off duty. Of course, if the use thereof when off duty results in conduct, the effect of which can be said to be detrimental to the Carrier's best interests and welfare, then such use is properly subject to discipline. When, as here, an employe is subject to call on his rest days, unless he has permission to be away, he cannot be said to be on duty or reporting for duty within the meaning of the rule.

In addition to the difficulties claimant got into on June 3, 1950 the record shows he was arrested in Union on April 30, 1949 and charged with reckless driving; that he posted a \$25.00 bond, which he forfeited; that on May 12, 1950 he was again arrested in Union and charged with disorderly conduct by being drunk and with using abusive language; and that he posted a \$26.00 bond, which he forfeited. As a result of this latter incident claimant was, on May 27, 1950, called into the Superintendent's office. He then promised the Superintendent he would leave liquor alone. Admittedly he did not do so as he confessed to the use thereof on June 3, 1950. All of these were proper incidents for Carrier to consider in determining the punishment it was reasonable to impose. They were matters which claimant, by his conduct, had admitted.

However, the statements of Perry Thomas and Wash Hooker, who were members of claimant's gang, regarding the incident of May 15, 1950 when Thomas claims he bought liquor for claimant and both state that he drank it while on duty and the statement of Griffin McCabe, who carried mail between the post office and the trains at Union, regarding the incident of May 22, 1950 when he states he observed claimant on duty with the odor of liquor about him and when he used abusive language are of a different character. Claimant was never charged therewith nor given an opportunity to refute them. They were brought in after the hearing and are clearly ex parte statements. We find they should not be considered. The same is also true of the incidents referred to in the record relating to claimant's conduct which happened long after the hearing.

Claimant, at the time of this trouble, had been an employe of this Carrier for over 38 years of which approximately 36 years had been as a Section Foreman, the classification which he held at the time of his dismissal. The seniority arising by reason thereof was a very valuable right. Until the last year of this service his record appears unblemished. During this latter period he seems to have gotten into trouble with the civil authorities of Union on two different occasions because of his use of intoxicating liquor. These culminated, in so far as this claim is concerned, with the incident of June 3, 1950. His conduct on these occasions was detrimental to the best interests and welfare of the Carrier because, as its long time Section Foreman in this community, it naturally reflected on Carrier. Consequently claimant was properly subject to being reasonably disciplined. However, such discipline must be reasonable considering all the factors that are involved.

Considering the long period of service this employe has given the Carrier we think, in view of what we have already said, that to dismiss him and cause him to lose all his seniority rights is altogether out of proportion to the nature of the offenses involved. We find it unreasonable. We think the

period of time he has been out of service, almost two years, is sufficient penalty and that he should be immediately restored to service with seniority rights, including vacation rights, unimpaired. However, we do not think he should be allowed any compensation for wages lost while off duty. This latter would include any vacation pay which he had earned.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier violated the Agreement.

AWARD

Claim (1) sustained.

Claim (2) sustained in so far as it asks that claimant be immediately restored to service with seniority rights, including vacation rights, unimpaired but otherwise denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 1st day of May, 1952.