

Award No. 14865
Docket No. TE-15974

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago Great Western Railway, that:

1. Carrier improperly dismissed R. M. Mostrom from service.
2. Because of this violation Carrier shall be required to return R. M. Mostrom to his former position of leverman at Manly, Iowa, compensate him for all wages lost and reimburse him for all expenses incurred and other benefits which would have been paid by The Travelers Insurance Company.

OPINION OF BOARD: The Claimant was regularly assigned to the position of second shift Leverman at Manly, Iowa from October, 1964 until dismissal from service by the Carrier on July 22, 1965. His regular tour of duty was from 4:00 P. M. to 12:00 midnight, daily, except rest days of Tuesday and Wednesday.

There is no disagreement between the parties concerning the basic facts involved in this dispute. On July 2, 1965, Claimant donated one pint of blood at the Mercy Hospital, Mason City, Iowa during the early afternoon, which he had done before on several occasions over a period of years. Thereafter, he reported for work on his regular assignment at 4:00 P. M. and admittedly was sound asleep while on duty at 8:30 P. M. Claimant's dereliction of duty on July 2, 1965 resulted in the delay of certain train movements during his shift. A formal investigation was held, culminating in Claimant's dismissal from service for violating Carrier's Rules and Regulations of the Operating Department including the following:

"GENERAL NOTICE

Safety is of the first importance in the discharge of duty.

Obedience to the rules is essential to safety.

To enter or remain in the service is an assurance of willingness to obey the rules.

The service demands the faithful, intelligent, and courteous discharge of duty.

To obtain promotion capacity must be shown for greater responsibility.

GENERAL RULE P

The reading of newspapers, books, or periodicals, or the playing of games by employes while on duty is prohibited.

Employes must devote themselves exclusively to the Company's service, attending to their duties during prescribed hours, obeying instructions from the proper authority in matters pertaining to their respective branches of the service. They must not absent themselves from duty, exchange duties with, or substitute others in their place, without proper authority, nor engage in other business without permission.

GENERAL RULE Q

The Federal Hours of Service Laws for employes connected with train operation contemplate that employes in this service shall have ample rest and be physically and mentally fit for the proper performance of their duties.

RULE 700 (3)

Employes must be alert and devote themselves exclusively to the company's service, attend to their duties during the hours prescribed, reside where required, and comply with the instructions from the proper authority in matters pertaining to their respective branches of the service. They must not absent themselves from duty, exchange duties with or substitute others in their place, nor engage in other business without proper authority."

In the first instance, Petitioner asserts that Claimant did not receive a fair and impartial trial. A careful review of the transcript of the hearing discloses that Claimant selected his own representative, submitted evidence in support of his contention that blood-giving was directly responsible for his sleeping while on duty and was afforded an opportunity to call witnesses who had knowledge of the circumstances. Although Claimant was thoroughly examined by Carrier's representative as to his understanding of the applicable Rules and Regulations, Petitioner has offered no evidence of bias, prejudice or improper conduct on the part of either the examining officer of the Carrier or the Trial Officer before whom the hearing was held. Therefore, we find no merit in Petitioner's objections to the conduct of the trial.

The gravamen of Petitioner's position is that Claimant was a victim of circumstances beyond his control when he fell asleep while on duty and should not be held accountable for his dereliction of duty. Carrier contends that Claimant has admitted violations of the applicable Rules and Regulations of the Operating Department and that the penalty imposed was not excessive for such serious violations.

The record discloses that Claimant was also regularly employed by a dry cleaning establishment without expressed permission from the Carrier as required under Rule 700 (3) of Carrier's Rules and Regulations of the Operating Department and that he had worked for said firm on July 2, 1965, prior to giving blood and reporting for duty on his regular shift with the Carrier. Under the circumstances, it would be impossible for a layman to determine whether the direct cause of Claimant's exhaustion and resulting slumber was his blood donor activity, his earlier hours of employment for another employer or a combination of these factors. In any event, it is not surprising that Claimant was unable to complete his regular assignment with Carrier on July 2, 1965 without succumbing to sleep.

Claimant's duties demanded a high degree of diligence which he apparently failed to comprehend when he reported for work on July 2, 1965. There is nothing involuntary in a situation where an individual deliberately reports for work knowing that he may be physically incapacitated and unable to properly perform his duties. Despite the fact that Claimant had never before encountered drowsiness after giving blood, he was aware of that possibility and should have notified Carrier of the situation when he reported to work.

Claimant never received any previous warnings regarding his outside employment activity by the Carrier and his employment record for eight years with Carrier was unblemished. These factors would lead us to believe that the dismissal punishment is more severe than would appear appropriate except for the broad latitude given Carriers by this Board in the matter of assessing discipline. Claimant's duties related directly to safe and efficient railroad operation where alertness and accuracy are essential and we cannot substitute our judgment for that of the Carrier in the absence of evidence that the penalty assessed was arbitrary, capricious and unsupported by the record. Accordingly, we will not upset the punishment decided upon by the Carrier and will deny the claim. See Awards 9049, 10440, 12438, 12811, 13295.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Contract was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1966.

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