NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19561
THIRD DIVISION Docket Number MW-19516

Gene T. Ritter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Norfolk and Western Railway Company

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

(1) The discipline assessed to Crossing Watchman Edward Robinson on the basis of an incident which occurred "at approximately 9:40 P.M., Monday, August 17, 1970" was improper, unjust and grossly disproportionate to the offense with which charged (System File MW-CGO-70-108).

(2) The charge be stricken from the claimant's record and payment allowed for the assigned working hours lost, less any earnings in the service of the company (Rule 22-e).

OPINION OF BOARD: Claimant, prior to the assessment of his punishment herein, had been in Carrier's service for 17 years. At the time of the involved incident, he was assigned to a position of Crossing Watchman and had held that position for 5½ years. On August 17, 1970, Trainmaster Gillispie stopped at Claimant's work location and requested directions to the Osborn Yard Office. At 9:35 P.M., on that same date, this Trainmaster, accompanied by Station Agent Carroll, again stopped at Claimant's work location at which time they detected an odor of alcohol on Claimant's breath. When first questioned by the Trainmaster, Claimant denied that he had consumed any alcohol at all. However, two empty cans of beer were found in Claimant's shanty. Upon confronting Claimant with the two empty cans of beer, Claimant admitted that he had consumed two cans of beer. Claimant was thereupon removed from service and taken to his home. In due course, Claimant was charged with the use of intoxicants while on duty and a hearing was arranged for. At the hearing, Claimant was found guilty as charged and was dismissed from service. The effective date of Claimant's dismissal from service was September 3, 1970. After several conferences, Claimant was permitted to return to service on March 3, 1971, with all rights unimpaired, but without compensation for the wage loss suffered. The Organization urges that this Board should find that the discipline assessed was improper, unjust and grossly disproportionate to the offense as brought out in the investigation. The record discloses that the guilt of Claimant was established, not only from the testimony, but also by Claimant's admission that he possessed and consumed two cans of beer while on duty. The consumption of beer, or intoxicating liquors, while on duty constitutes a violation of Carrier's rules. Therefore, the only question before this Board in this dispute, is to ascertain whether Carrier's decision was unreasonable, capricious or arbitrary. The record does not disclose any other instances, during Claimant's 17 years service, wherein discipline had been assessed Claimant; nor does it reveal any blemishes on his personnel record. The record further discloses that there was no evidence indicating that Claimant was unable to perform his duties at the time, or immediately after he had consumed the two cans of beer.

This Board, therefore, finds that there was sufficient evidence to support the finding of guilt; however, we believe the penalty of six months suspension without pay was unreasonable and excessive under the circumstances. Had this Claimant had a history of prior violations, or had this Claimant had his faculties impaired at the time of this violation, the punishment imposed would not have been excessive. However, this Claimant had 17 years of unblemished service and there was no evidence that at the time giving rise to this investigation and resulting punishment, that Claimant had his faculties impaired to the extent that he could not perform his duties. It is also significant that only two cans of beer were found on the premises, which indicate that this Claimant had no intention to consume alcohol until his faculties were impaired.

By this award, this Board is not indicating that it condones the consumption of alcoholic beverages while on duty. This is one of the most serious offenses that can be indulged in by an employee. However, this Board does recognize that there are degrees to violations and does put some weight upon prior records of employees.

Based upon the record in this case, we find that the proper measure of discipline should be suspension for 90 days. Accordingly, we will uphold the first 90 days of Claimant's suspension and reimburse Claimant for the remaining days that he was suspended. The proper measure of damages for the remaining days that he was improperly suspended is the difference between any actual earnings Claimant had during this period and the amount he would have earned had he not been suspended.

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 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 the Agreement was violated.

A W A R D

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of January 1973.