

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21236  
Docket Number MW-21387

Walter C. Wallace, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Terminal Railroad Association of St. Louis

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

(1) The dismissal of Truck Operator C. Simmons was capricious; arbitrary, without just and sufficient cause and on the basis of unproven charges (System File TRRA 1975-7/013-293-16.)

(2) Truck Operator C. Simmons be reinstated with seniority, vacation and all other rights unimpaired; the charges against him be stricken from his record; he be compensated for all wage loss suffered, all in accordance with Rule 24(d).

OPINION OF BOARD: The claimant was a truck driver with three years seniority. On January 10, 1975 he reported for duty at 7:30 a.m.. Thereafter he drove his truck to transport a welder to the Valley and then to move some tools for a gang who were replacing ties. The gang foreman Russell assigned Clyde Perkins to work with claimant because Perkins had injured his hand and was on light duty. Perkins rode with claimant and they followed a longer route because a train blocked a crossing. Claimant let Perkins drive the truck and they were flagged down by claimant's supervisor Mr. Bon Stogner who immediately asked why Perkins was driving the truck. Then claimant was instructed to report to the office for further assignment. When he arrived there he found himself in the presence of several carrier officials. Stogner again asked claimant why he permitted Perkins to drive the truck. Claimant did not reply. Instead he accused the supervisor of trying to get his job. The witnesses in the office later testified that they could detect the odor of alcohol on claimant; that claimant did not walk in a stable manner and stumbled and fell against objects; that he talked in a loud and abusive fashion contrary to his usual custom; and that he gave the appearance of one under the influence of alcohol. Based upon this behavior claimant was sent home. There is evidence that he had difficulty driving his car. At a subsequent date he was charged with: 1) permitting an unauthorized person to operate the truck; 2) insubordination; and 3) violation of Rule "G" (rule prohibiting use of intoxicants by employee subject to duty).

A hearing was held on February 11, 1975 and claimant was represented. The transcript runs approximately 79 pages and covers the extended testimony and cross examination of twelve witnesses including claimant. In a letter dated February 25, 1975, claimant was informed that the charges against him had been proven and he was dismissed from service. Thereafter claimant entered this claim on the grounds his dismissal was capricious, arbitrary and without just and sufficient cause and on the basis of unproven

**charges.** Claimant seeks reinstatement with **rights** unimpaired, clearance of **the record** and **compensation** for lost wages in **accordance** with Rule 24(d).

**This** Board has the responsibility to review the **record** and determine whether or **not** the decision of the carrier is supported by substantial evidence. We are **not** authorized to substitute our **version** of the facts for that of the **carrier**. Here the record on each charge contains substantial evidence in support of the **findings** of guilt. Taking them **in order**: the charge of permitting an authorized person to operate the truck was virtually admitted by **claimant**. We find there is **no merit** to the contention that Perkins may hold a license under the state law permitting him to drive a **truck** of the size of the one involved here. Whether or **not** this **is** so it is uncontroverted that Perkins was **not** authorized to drive **this** truck and claimant admitted he knew this to be **so**.

Next, the charge of insubordination is premised upon claimant's failure to respond to the supervisor's question as to why he permitted Perkins to drive the **truck**. This is corroborated by the testimony of a string of witnesses. **All** agree that claimant would not answer and instead made accusations in a loud and abusive **manner** that the supervisor Stogner was trying to get **his** job. We **cannot**, under the circumstances, say It was **an improper** question and claimant's failure to **respond** is amply proven. The last charge concerns Rule "G". Although it is true **no** one saw claimant **drinking** liquor or **in** the possession of liquor on that day, nevertheless a violation of this rule **may** be sustained. Here competent witnesses testified they could **smell** the **odor** of alcohol on claimant. **They further** testify his **walk was** unsteady and he fell and **stumbled**, knocking over a mail box **in** the office. He flailed his arms, **striking** the wall at different times. His voice was loud and abusive. **Generally, he was not behaving normally.** Added to this his own admissions that he **had been** drinking the night before, that he had a "bad night", the inferences are **clear**. Claimant's representatives made a valiant effort to describe **his** condition in terms of **emotional** upset emphasizing his recent **illness**. It is **not our function** to assign weights to the conflicting evidence. We **conclude the record contains** substantial evidence that justified carrier's finding of a violation of Rule "G".

**Throughout** the record the suggestion **is** advanced by **claimant** that supervisor Stogner was out to get his **job**. For the first **time** before this **Board** it, is pointed out that the confrontation with **claimant** was staged with a large number of witnesses **present**. It **is** claimed this was a "highly irregular" way to handle the matter. It is pointed out that responsible carrier officials would **not** permit claimant to **drive home** if he was an intoxicated as they claim. Presumably, the **argument** is advanced that there **is more** here than the record **shows**. The only **answer** we can provide to these new suggestions is that **they** are highly speculative and, **moreover**, they **may** be outside the **ambit** of our consideration. **This Board is** limited to a consideration of evidence developed on the property. **The matter of Stogner's**

alleged bias was alluded to on the property, of course, but it never got beyond the accusations attributed to claimant. It is too late to develop this approach when the case has reached this Board. That should have been done on the property where it could be tested in the same way as other **evidentiary** material.

In **summary**, we are compelled to conclude that the carrier's decision was **not** capricious, arbitrary and without just and sufficient cause. The charges against claimant were proven by substantial evidence in a fair and impartial hearing and that is all we can require.

We take note that claimant **is** a young man with three years of seniority. The supervisory witnesses had praiseworthy **comments** concerning his work and behavior under **more normal circumstances**. It must be **assumed** carrier is well aware of the alternative punishment that could be imposed here short of dismissal. It did **not** follow that course for reasons best known to itself. Considering the serious nature of the offenses here, we are **not** disposed to second guess them.

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

The Agreement was **not** violated.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September 1976.