

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Frank A. Zablonksi
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

"(1) The dismissal of Railroader F. A. Zablonksi for alleged '... violation of Rule GR-G of the Guilford Transportation Industries - Rail Division Employees Safety Rules.' on August 15, 1988 was without just and sufficient cause, arbitrary, capricious and on the basis of unproven charges and in violation of the Agreement.

(2) The Carrier violated the Agreement when it refused to afford the Claimant his right of appeal as set forth in Section VI. 'Discipline', following the appeal conference which was held on October 10, 1988.

(3) As a consequence of the violations referred to in either Part (1) and/or Part (2) above, Mr. F. A. Zablonksi shall be returned to his position with all seniority and benefits unimpaired and he shall be paid for all wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As Third Party in Interest, the United Transportation Union was advised of the pendency of this dispute and filed a Submission with the Division.

On August 15, 1988, Claimant was assigned as a tamper machine operator. On that date, at about 11:30 A.M., he was observed by the Production Supervisor and the General Foreman, with an open can of beer in his possession while on duty and under pay on Carrier property. Claimant was removed from service and taken to a local hospital for testing. Subsequently,

by letter dated August 17, 1988, Claimant was instructed to appear for a Hearing on August 30, 1988, on a charge of "violation of Rule GR-G of the Guilford Transportation Industries - Rail Division Employees Safety Rules." Claimant was present and represented by a Maintenance of Way representative throughout the Hearing. He was permitted to testify on his own behalf and both he and his representative were accorded the opportunity to cross examine the Carrier witnesses. Following the Hearing, Claimant was notified by letter dated September 16, 1988, that he was dismissed from Carrier's service.

Under date of September 28, 1988, an appeal on behalf of Claimant was initiated by the same Maintenance of Way representative who had assisted Claimant at the Hearing. This letter of appeal was addressed to Director Labor Relations Dinsmore and was hand delivered to Director Labor Relations, Maintenance/Administration Fay at Carrier's headquarters. On October 10, 1988, Mr. Fay and the Maintenance of Way representative met in conference to discuss the appeal. When no response to the conference was received, the Maintenance of Way representative addressed a second letter to Director Labor Relations Dinsmore on December 21, 1988. In reply to the December 21, 1988, letter, Carrier's Vice President Human Resources advised the Maintenance of Way representative that Director Labor Relations Dinsmore was the highest designated officer under the Railway Labor Act for all Springfield Terminal Railway matters. No reply was ever made by Director Labor Relations Dinsmore to either of the letters addressed to him. Later, by letter dated August 25, 1989, Claimant filed a Notice of Intent with this Board seeking a final determination on his dispute.

This is one of a series of cases from the same Carrier in which the same, or very similar, jurisdictional and procedural arguments have been advanced by both Petitioner and Respondent.

In this case, Carrier argues that:

1. Inasmuch as the employees of the Carrier are classified as "Railroaders" or "Railroad Employees," they do not fit the traditional craft or class of employees as defined in Circular No. 1 of this Board and therefore, if heard at all by our Board, this case should be heard by the Fourth Division - not the Third Division;
2. Only the United Transportation Union has the right to represent Carrier's employees on appeals;
3. The appeal in this case was not handled "in the usual manner" on the property inasmuch as a Maintenance of Way representative attempted to handle the appeal on behalf of the Claimant; and
4. The charges were proven by substantial evidence.

Claimant, on the other hand, contends that:

1. The Rules Agreement was violated because no stenographer was present during the investigatory Hearing;
2. The Rules Agreement permits Claimant to be represented "by counsel of his choosing";
3. The Rules Agreement was violated because no response was made by Carrier to the appeal Hearing which was held on October 10, 1988; and
4. The charges as made were not proven.

These jurisdictional and procedural arguments have been considered and ruled on in Third Division Awards 28726 and 28767. Those decisions are, by reference, made a part of this Award.

On the merits, we are faced here with a charge of alleged violation of Carrier's Safety Rule GR-G. That Rule reads as follows:

"GR-G The use of alcoholic beverages, intoxicants or narotics (sic) by employees subject to duty or their possession or use while on duty is prohibited and is sufficient cause for dismissal.

Employees using prescriptions or non-prescription medications must determine from their physician or pharmacist whether or not the medication will impede the safe performance of their duties. Employees must not use medications which may impede their performance before reporting for or while on duty."

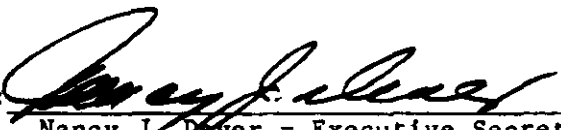
The Hearing transcript in this case contains substantial, credible evidence to support the conclusion that Claimant had an alcoholic beverage in his possession while on duty. That act, by the language of the aforementioned Safety Rule, is sufficient cause for dismissal. The Claim for reinstatement is, therefore, rejected.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1991.