

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
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(Western Weighing and Inspection Bureau

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10518) that:

1. The Western Weighing and Inspection Bureau acted in an arbitrary, capricious, unjust manner and in violation of the current Schedule Agreement when it dismissed F. H. Ripley from its service, effective March 30, 1989.

2. The Bureau shall now be required to immediately reinstate Claimant F. H. Ripley to his former position and compensate him an amount equal to what he could have earned including, but not limited to wages, expenses, overtime, holiday pay and credit for future vacations as though he had not been discharged. Further, the Bureau shall pay all medical expenses and for the cost of a replacement policy for health and welfare and life insurance."

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 waived right of appearance at hearing thereon.

The Claimant has a seniority date of May 13, 1959, and at the time of the incident precipitating his dismissal, he was working as Traveling Agent with headquarters at San Antonio, Texas. On March 30, 1989, Claimant was working alone, performing an annual audit ["test weighing"] at the Elgin Butler Brick Company plant located in Elgin, Texas. An employee of the Brick Company reported to her superior that she believed Claimant was exhibiting signs of being under the influence of alcohol. The superior, who concurred with the employee's observation, then directed Claimant to leave the premises immediately and notified the Carrier's Kansas Supervisor. He then notified Claimant's Supervisor, the General Agent, who suspended Claimant as of the close of business on March 30, 1989.

By letter of March 31, 1989, Claimant was notified to appear for a Hearing, and was charged with the following:

- "1. Failure to protect your assignment from approximately 2:30 p.m. to 5:00 p.m. on March 30, 1989, at Elgin Butler Brick Company, Elgin, Texas where you did not complete test weighing.
2. Insubordination on March 30, 1989, in that you refused to follow written instructions given by Mr. R. A. Wentrcek, District Manager dated January 23, 1976, to refrain from drinking intoxicating beverages while performing your duties as a representative of the Western Weighing and Inspection Bureau.
3. Unable to perform your duties on March 30, 1989, account of your confused and disorientated [sic] condition."

Following a Hearing held on April 12, 1989, Claimant was notified of his dismissal from service by letter dated April 20, 1989. The dismissal was appealed up to and including the highest officer designated to handle such matters. In the process of the appeal, documentary evidence was provided by the Organization concerning Claimant's successful completion of an Intensive Outpatient Program on March 19, 1990, following an admission on February 5, 1990. The Carrier continued to decline to reinstate Claimant, and the matter remains unresolved.

Because of the nature of Claimant's job, and the reduction of supervisory staff to whom he was supposed to report, the Carrier did not react immediately to the events leading up to Claimant's premature departure from the Elgin Butler Brick Company plant. Accordingly, Claimant was not required to submit to any medical test for the presence of alcohol in his blood at the time he was asked to leave the Brick Company's premises.

The Organization presented testimony in Claimant's defense from persons who associated with Claimant at breakfast preceding his visit to the Brick Company plant, and at dinner following that visit, stating that Claimant appeared "perfectly fine," "courteous," and "professional" in his demeanor.

Given the nature of the customer complaint, it was not unreasonable for the Carrier to withhold him from service pending investigation. Even if, arguendo, the evidence of investigation was viewed as inconclusive, Claimant acknowledged an alcohol abuse problem and has taken steps to rehabilitate himself. Accordingly, despite the failure of the Carrier to subject Claimant to appropriate tests at the time of the complaint, the evidence before us does not lend itself to exoneration of the Claimant.

The Board is persuaded, however, that this is an appropriate case for reinstatement on a "last chance" basis without backpay. The conditions of this reinstatement include Claimant's good faith participation in the Carrier's Employee Assistance Program, passing a physical examination, and restriction of his seniority to areas in which his work is more directly supervised, until such time as the Carrier may feel confident of his ability to resume his former assignment.

Finally, it should be noted that the decision of the Board in this case is sui generis because of the peculiar facts surrounding this particular incident and, therefore, will not serve as precedent in future cases.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.