

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20066
Docket Number MW-20148

Frederick R. Blackwell, Referee

(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(The Akron, Canton & Youngstown Railroad Company

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

(1) The dismissal of Trackman R. G. Watts for allegedly violating "Rules B and G of the General Notice to Employes and Rules 404, 425, 426, 427 and 448 of the Operating Rules" was improper, based upon unproven charges and in violation of the Agreement.

(2) Trackman R. G. Watts be reinstated with seniority, vacation and all other rights unimpaired and that he be compensated for all wage loss suffered, all in accordance with Rule 21.

OPINION OF BOARD: Claimant was dismissed from Carrier's service, effective May 26, 1972, after hearing at Akron, Ohio, and findings of guilt on charges that, on April 20 and 21, 1972, he violated Rules B and G of the General Notice to Employees and Rules 404, 425, 426, 427, and 448 of the Operating Rules of the Carrier. Prior to and on the dates in question, the Claimant was a trackman in Gang No. 1, which was headquartered in camp trailers at New London, Ohio. The gang's regular work schedule was 7:00 A.M. to 4:00 P.M.

The Employees protest the discipline on the grounds that: (1) Claimant was not afforded a fair and impartial investigation in that the Carrier prejudged the charges against him; (2) the hearing evidence did not prove the charges; and (3) the Carrier adduced no evidence to show that Claimant had been apprised of special instructions involved in the hearing. Carrier's position is that the charges were fully sustained by the hearing evidence and, accordingly, the claim should be denied.

The record contains no due process deficiencies, so we shall reject the Employee's first contention. The Employee's remaining contentions, concerning inadequate proof and lack of knowledge of special instructions, require a review of the hearing record in light of the charges made against Claimant.

The Rules which Claimant was charged with violating read as follows:

"B - Employes must be conversant with and obey the rules and special instructions. If in doubt as to their meaning they must apply to proper authority for an explanation.

- "G - The use of intoxicants or narcotics by employes subject to duty, or their possession or use while on duty, is prohibited.
- 404 - Employes must not absent themselves from duty, or change off with another for a trip or part of a trip, or day, without obtaining permission from their superior.
- 425 - Employes must report for duty at the appointed time, and crew members of a train or engine will, when necessary, assist in making up their trains.
- 426 - Profane or obscene language, altercations, boisterous behaviour or other unbecoming conduct at stations, on trains, or elsewhere is prohibited. Rudeness or incivility to patrons will not be tolerated.
- 427 - Negligence in handling Company business, sleeping on duty, wilful neglect of duty, viciousness, dishonesty, insubordination, disloyalty, giving false statements or concealing facts concerning matters under investigation are sufficient cause for dismissal.
- 448 - All employes must comply with instructions from proper authority and must perform all of their duties efficiently and safely."

In addition to the foregoing Rules, the Carrier entered into evidence a special instruction which was issued by Roadmaster R. J. Parsons under date of August 31, 1970, and which reads as follows:

"Post in outfit trailers Extra-Force No. 1.

It has been reported to me that some of you have been getting drunk and having women in outfits. Be advised, that while staying in outfits (trailers) belonging to this Company, you are governed by the rules, regulations, and special instructions of this Company. Anyone who violates the rules, regulations, and special instructions of this Company is subject to be removed from the service of same."

The issuance of these instructions was acknowledged in a statement signed by four affected employees under date of May 9, 1972. The essence of Carrier's case at the hearing was that Claimant was absent without permission on April 21, and that he was responsible for an incident, involving his drinking and women being on company property, in violation of company rules and special instructions. In defense thereto the Claimant testified that he had obtained

permission to be absent on April 21; that he was not drinking on company property; and that he had arranged for two women to pick him up in an automobile on April 21, Friday; and that the woman came on the evening of April 20, Thursday, but left and returned on Friday morning at 6:00 A.M.

On the charge of unauthorized absence, Roadmaster R. J. Parsons testified that in his opinion the Claimant did not have permission to be absent on April 21. However, the Foreman in direct charge of Claimant, Mr. D. A. Lewis, testified as follows:

"I told him that if he wasn't going to work, he might as well take off.

Was his absence then authorized or not authorized in your opinion?

I guess you would say it was kind of authorized after he claimed he wouldn't."

In view of the conflict between Carrier's own witnesses, and the tendency of the Foreman's statements to support Claimant's testimony on the unauthorized absence, we are constrained to treat the charge of absent without permission as not being supported by substantial evidence of record. However, we believe the record does contain substantial evidence on the charges concerning Claimant's improper conduct on April 20 and 21 in or near the two trailers situated on Carrier property at New London, Ohio. We further conclude that these charges, relating to drinking and the improper presence of women on Carrier property, are sufficiently serious to justify Carrier's discipline of dismissal.

Carrier's testimony on these charges shows that after an early quit at 10:00 A.M. on Thursday, April 20, due to rain, the Claimant spoke with Foreman Lewis about being absent from his trackman's duties on the following day. Despite this conversation the evidence showed that Claimant remained at the trailer site from the time of the early quit on Thursday morning until he was asked by the local Police Chief to leave the premises at 10:15 A.M. on Friday morning. It was further shown that Claimant smelled of alcohol at 10:00 A.M. on Thursday morning (by Foreman Lewis) and also at 12:30 P.M. the same day (by Roadmaster Parsons). The Claimant was told by Roadmaster Parsons at 12:30 P.M., Thursday, to "go to bed and sleep it off", but Claimant took no heed. He also appeared to have been drinking at 10:00 A.M. on Friday morning, when the Police Chief asked him to leave. In addition, Claimant was seen to "take a drink of some beer" on Thursday night, April 20 by Trackman Balogh. With respect to the two women, it was conclusively shown that they were in and around the trailers during part of Thursday night, April 20, and again from 6:00 A.M. until 10:15 A.M. the following morning. On Thursday evening at about 8:00 P.M. Claimant struck one of the women; this episode, as described by Trackman Brown, was as follows:

"BHL: You testified something about the woman needing protection and that she wanted to wait somewhere until her sister could leave. What was the circumstances as far as you know that would make this woman make such a statement.

DLB: When we walked out of the door, she was crying and on her knees. Her sister said that he hit her, and he said, 'You know I don't hit girls, but you said that I could.' She said, 'Well! I didn't mean it like that!'

BHL: Who is this he you are referring to?

DLB: Robert Watts."

On the following morning, at about 7:30 A.M., one of the women was found by Foreman Lewis in one of the trailers, fully clothed, except for shoes, lying in Claimants' bunk; Claimant was in another trailer, also fully dressed. At about 10:00 A.M. on the same morning, the local Police Chief found both women still on the premises. The Chief's testimony is as follows:

"BHL: When you arrived at the property, what did you observe?

NBS: I went to Mr. Watts's trailer and asked him to leave.

BHL: Was Mr. Watts present at that time?

NBS: Yes, sir.

BHL: Was there anyone else present at that time on the trailer with Mr. Watts?

NBS: Yes, sir.

BHL: Who?

NBS: A young lady got off of the bunk bed.

BHL: A woman was in the trailer with Watts? Were they the only people in the trailer at that time?

NBS: As far as I know.

BHL: Were there any other women or other people around?

NBS: This one lady went from his trailer to another trailer and another lady came to the door.

"BHL: In other words, there were two women there?

NBS: Yes, sir.

BHL: In the trailer with Watts?

NBS: There were two women but there was only one in his trailer. The other woman was in another trailer.

BHL: Was there anyone in the other trailer with the other woman?

NBS: Not that I know of.

BHL: What time of day was this?

NBS: About 10:10 to 10:15 a.m., I would guess.

BHL: Was there any indication of drunkenness, boisterous behavior, fornication, or otherwise?

NBS: He didn't give me any static but from his appearance, I would say he had been drinking.

BHL: Then there was no one on the trailers except for Mr. Watts and the two ladies. Is this correct?

NBS: Those were the only ones that I had seen?

BHL: A woman was in the trailer with Mr. Watts?

NBS: Yes, sir.

BHL: Then, what did you do Mr. Snyder?

NBS: I asked him to leave at the request of Mr. Keysor. He did leave. Both girls got into the car and he got in with them. They then drove off together. I stayed there till they left."

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CLM: At that particular time when you conferred with Mr. Watts, what was his condition?

NBS: I would say that he had been drinking, but I wouldn't say that he had been drunk at that time. He got his shirt on and left. He didn't give me any static."

As we have indicated, on the basis of the foregoing evidence and the record as a whole, the charge of violating Rules 404 and 405 is not supported by substantial evidence of record. There is substantial evidence, however, to support the remaining charges which involve improper conduct of a serious nature and, consequently, we conclude that Carrier's dismissal of Claimant was justified. The Claimant's own testimony did not seriously controvert the charges of improper conduct; he merely said that he did not drink on company property and that the women guests did not remain at the trailer site overnight. He made no attempt to controvert the main thrust of Carrier's case, namely, that his drinking had rendered his behavior unacceptable, that he had ignored a warning from a Carrier official "to go to bed and sleep it off", that he was responsible for the women's presence on the property, and that he struck one of the women with a physical blow, bringing tears to her face and causing her to express a need for protection against his further assaults. Obviously, the credibility issues raised by Claimant's testimony were resolved against him by Carrier and we find no basis in this record for disturbing that determination. Furthermore, we have no doubt that Claimant was apprised of the special instructions dated August 31, 1970. He made no claim that he was unaware of the instructions, while four other employees acknowledged both the publication and their understanding of the special instructions. And while the instructions might have been written in fuller detail, we believe, nonetheless, that they gave clear notice that the trailer facilities were not to be used for drinking parties involving female guests. That the instant drinking party led to Claimant's striking one of the women, causing her to enter the trailers of other employees for stated safety reasons, illustrates quite clearly the Carrier's need to prohibit the conditions from which such an incident evolves. In sum, in disobeying the special instructions, the Claimant also placed himself in violation of the Rule 426 prohibitions against altercations, boisterous behavior, or other unbecoming conduct. Likewise, Claimant's conduct was in violation of the Rule 448 requirements that employees shall comply with instructions from proper authority. Accordingly, we shall deny the claim.

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

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That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A W Paulse
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1973.