

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21138
Docket Number MW-21376

Walter C. Wallace, Referee

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

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

(1) The dismissal of Truck Driver Ralph W. Jennings was without just and sufficient cause and on the basis of unproven charges.

(2) Claimant Jennings shall be reinstated to service with seniority, vacation and all other rights unimpaired and with pay for all time lost.

OPINION OF BOARD: The claimant reported for work on August 15, 1974 as a truck driver. He encountered some delays at a blocked crossing, obtained his truck and drove it from the garage to the place where he was to load up lumber. At that point he proceeded to back the truck into a loading position and had difficulty doing so, requiring that he drive forward and back up again. Subsequently on that same morning Gangleader Bizot informed Foreman Zagroba that his crew refused to ride with claimant and the foreman then called claimant aside and questioned him about "drinking". The latter admitted having drinks before midnight the night before but denied he was under the influence of alcohol and offered to take a sobriety test. He was not given the test and he was suspended from service and charged with violation of Rule G which provides:

"The use of intoxicants or narcotics by employees subject to duty, or their possession or use while on duty, is prohibited."

Based upon an investigation and hearing held on August 22, 1974 the Carrier notified claimant that the charges of violating Rule G had been proven and he was dismissed from service.

The record in this case became confusing for several reasons. First, Gangleader Bizot had originally protested that his crew would not ride with claimant and it turned out that he was actually protesting on behalf of himself alone and he testified that no one else had complained to him at that time. Carpenter Beaver, who was part of Bizot's crew, testified that he had in fact that morning complained to Bizot that he did not want to ride with claimant because the latter was under the influence of alcohol. Zagroba, on the other hand, took claimant out of service because the others would not ride with claimant (Bizot's claim) and he corroborated the statements of others that claimant had the odor of alcohol but he did not reach a conclusion regarding claimant's sobriety. Further, there is

the fact that claimant had requested a sobriety test and had not received one.

If one follows the twistings and turnings of a tangled fact situation such as this, it is possible to arrive at conclusions at variance with that reached by the trier of facts. But that is not the function of this Board. We must determine whether there is substantial evidence to sustain a finding of guilt. The decision was based upon the testimony of competent witnesses: (1) all three agreed that claimant had the odor of alcohol about him; (2) one said his "eyes were glassy"; (3) two witnesses refused to ride with him; (4) claimant admitted to having drinks albeit while off duty the previous night; (5) his handling of the truck, according to two witnesses, was unusual.

Evidence of intoxication may be derived from the testimony of an average individual capable of detecting and testifying concerning that fact. See Award 16280 (Referee Perelson). Here the decision is supported by evidence in the record and Carrier met its burden of proof. We have no basis for suggesting that Carrier was arbitrary or capricious in reaching its conclusions.

On behalf of claimant much is made of the fact that claimant requested a sobriety test and it was not given to him. The denial of this test is unexplained although at one point it was agreed to let him take such a test. The point here is that this is evidence to be considered by the trier of facts for whatever value it may have. We should point out that no rule has been cited by claimant requiring the administration of sobriety tests when requested.

With respect to the hearing and investigation accorded claimant, it was fair and impartial. It needs no citation of authority to support the proposition that an employe under the influence of intoxicants is subject to dismissal. If there is any exception conceivable it would be difficult to argue it should be in favor of a truck driver carrying personnel and supplies. Similarly, we see no merit in the claimant's contention that it was improper to take him out of service pending investigation.

Ordinarily claimant's prior record is a factor to be considered in determining the propriety of the penalty imposed. At the Board level we are asked to consider "claimant's previous unblemished record". We have reviewed the record on the property and we find that the record is silent in this connection. Such allegations or evidence cannot be raised for the first time before this Board and we are powerless to consider arguments in that regard.

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 Employee involved in this dispute are respectively Carrier and Employee 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1976.