

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 trains blocked a crossing. Claimant let Perkins drive the truck and they were flagged down by claimant's supervisor Mr. Don 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 employes 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 as 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:

A.W. Pauls
Executive Secretary

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