

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10306) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Fresno, California, when it improperly removed Mr. R. C. Mott from service on October 24, 1987; and

(b) Carrier shall now compensate R. C. Mott the daily rate of his assignment for each work day from the date of dismissal, forward, until he is reinstated to service (40 hours per week)."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

Following a hearing conducted on November 5, 1987, Claimant was dismissed for violating Rule 6, which prohibits, inter alia, the use of alcohol while subject to duty and reporting for duty under the influence of alcohol. Although only one of the three witnesses at the investigation testified that Claimant seemed to be sluggish and slow in his speech, all agreed that he smelled of alcohol. Claimant, who worked from 11:45 P.M. to 7:45 A.M., testified that he consumed four or five beers from the time he got off duty from his previous shift until approximately noon.

The Organization first asserts that the Carrier prejudged Claimant by withholding him from service pending the outcome of the hearing. Next, they argue that the Carrier's failure to promptly furnish copies of the transcript impeded the Organization's appeal of the Claim. Under the fact situation in this case, we find that neither of these objections has merit.

It is well established by the Awards of the Board that laymen are capable of determining whether or not an individual is intoxicated. See, for example, Third Division Award 21138. Additionally, that conclusion may be reached upon a finding of the odor of alcohol on an employee's breath. See Third Division Award 24873. We find, therefore, that there was sufficient evidence to support the Carrier's decision to impose discipline.

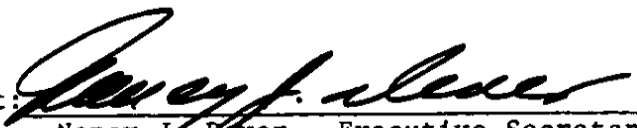
Without taking away from the seriousness of Claimant's offense, we find that the penalty of permanent dismissal is unduly harsh in light of the full record. Accordingly, Claimant is to be reinstated to service with seniority and all other rights unimpaired, but without compensation for time lost. Claimant should be aware that the Carrier is not expected to tolerate future violations of this nature on his part.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of October 1989.