

Award No. 4408

Docket No. 4363

2-SAL-CM-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current applicable agreement Coach Cleaner Ollie Cook was unjustly charged in an investigation, conducted in the office of the General Foreman, Car Department, Thursday, October 5, 1961, Hialeah, Florida, and discharged from service upon receipt of letter under date November 1, 1961.

2. That accordingly the Carrier be ordered to reinstate Coach Cleaner Ollie Cook, with seniority rights unimpaired and compensated for all wages lost as the result of said unjust charges and dismissal.

EMPLOYEES' STATEMENT OF FACTS: Ollie Cook hereinafter referred to as the claimant has been employed by the Seaboard Air Line Railroad Company, hereinafter referred to as the carrier, for 17 years, assigned as coach cleaner, Hialeah shops, Hialeah, Florida. Her regular assigned hours were from 12:00 Midnight to 8:00 A. M. work week Friday through Tuesday, rest days Wednesday and Thursday. She was notified by letter under date September 25, 1961 from Mr. R. L. Harper, assistant master mechanic, to appear for formal investigation to be held in the office of the general foreman, car department, Hialeah, Florida, September 29, 1961 at 10:00 A. M. charging her with being on duty in an intoxicated condition in the early morning of Sunday, September 24, 1961.

On September 29, 1961 claimant was given an investigation.

On November 1, 1961 the claimant received notice of her dismissal from the service.

It is pointed out that the claimant was able, available and willing to be restored to service since November 1, 1961 and that this dispute has been handled in accordance with the provisions of the agreement, effective September 1, 1949, as subsequently amended, with the proper officers of the carrier, including the highest designated carrier officer with whom such matters may be handled with the result that this officer has declined to make satisfactory adjustment of the dispute.

the charge of involuntary manslaughter in the District Court in no way disproves or absolves claimant from the finding of rule violation here. That trial involved different charges and different requirements of proof."

Since there was conclusive positive evidence, including medical diagnosis, that claimant was intoxicated while on duty, there can be no merit to the claim that she was unjustly charged and unjustly dismissed from the service and it should be denied.

FINDINGS: The Second 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 employe 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.

Claimant was charged with being on duty in an intoxicated condition. The Organization's submission contained a verbatim transcript of the investigation of the charges made by the carrier.

From its inception this Division has stated that in disciplinary cases it is without authority to substitute its judgment for that of the carrier unless the employes affected have been discriminated against or treated in an arbitrary or capricious manner.

Claimant Cook alludes to discrimination; however, she does not convincingly show that her charge is true therefore, in light of the record herein, her claim for re-instatement must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February, 1964.

DISSENT OF LABOR MEMBERS TO AWARD 4408

The record discloses that prior to the time the claimant testified in behalf of another employe she had incurred no disciplinary action during her approximately 17 years employment with the carrier. Subsequent to her testimony the carrier accused her of giving false testimony in court and scheduled an investigation. The charge was withdrawn however when the Judge entered an order requiring that any such investigation be conducted in his court. At a later date when the claimant was reported by a fellow employe to be ill and was found "passed out" it was immediately assumed that she was intoxicated and she was turned over to the metropolitan police. Later that day she pled

guilty, was released on payment of a fine and was subsequently dismissed by the carrier. Although the Court later, after a jury trial, adjudged her not guilty of the charge of drunkenness the carrier refused to reinstate her in spite of her seventeen years of faithful service and no previous record of disciplinary action.

In view of the facts in the case, the findings and award of the majority are incomprehensible and a gross miscarriage of justice.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink