

Award No. 1112

Docket No. 1057

2-ACL-CM-'46

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That S. B. Crawley, car inspector, Waycross, Ga., be reinstated with seniority rights unimpaired and compensated for all time lost retroactive to March 26, 1945.

EMPLOYEES' STATEMENT OF FACTS: Mr. Crawley's employment with the Atlantic Coast Line Railroad Company dates from November 18, 1922. He was first employed as car inspector helper, later temporarily transferred to the police department, and on July 19, 1924 returned to the car department as step-rate car inspector; completed his step-rate apprenticeship 5-31-25 and established mechanic's seniority date 12-31-24.

On the night of February 21, 1945 and after completing his tour of duties as second shift car inspector—4:00 P.M. to 12:00 Midnight, Crawley was arrested by the city police on complaint filed by his sister-in-law, who, incidentally, insofar as Mr. Crawley is concerned, was a most unwelcome guest. The arrest was made about 1:00 A.M., February 22.

Bond was arranged and preparation for Mr. Crawley's release was in progress early on the morning of February 22, when a peace warrant was issued and served on Mr. Crawley through the sheriff's office upon complaint of the same sister-in-law. Crawley was then transferred from the city jail to the county jail. Following his transfer to the county jail, two (2) additional peace warrants were issued and served at intervals through the sheriff's office. The last two were issued upon complaint of Crawley's wife and daughter respectively.

Immediately upon being transferred to the county jail, Inspector Crawley, realizing that he would not be able to protect his second shift assignment, requested Deputy Sheriff J. S. Walker, to advise his foreman of his whereabouts and his inability to report for work. Similar request was also made of the County Jailer Cy Stevens.

Crawley was released from jail on the morning of February 27. He immediately reported to the Car Foreman, W. J. Parker personally explaining his absence from work and at the same time advised Mr. Parker of his inability to report for duty on that date. He requested of Mr. Parker, and was granted by him, permission to be off for several days in order to attend to some personal matters; much of which was necessitated by his recent arrest and confinement in jail.

1937, then condoning the many scrapes he got into with the law up until February 1945. On each occasion Crawley was incarcerated in jail he lost time and his condition affected his services with the company. The example set up by Inspector Crawley was detrimental to other employes and it is indeed difficult to understand how the representatives of the employes have the effrontery to carry a case of this kind to the Adjustment Board.

The records show that Mr. S. B. Crawley has gone through many more scrapes than the average employe.

The carrier evidently made a grave mistake by keeping this man on the payroll so long and we content that enough evidence has been shown to prove that Mr. Crawley violated the rules as charged, not only in February 1945, but on many previous occasions.

The carrier contends the discipline administered in this case is not unreasonable or unjust and only applied in the interest of the service, and respectfully request the National Railroad Adjustment Board to decline the request of the employe.

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.

The parties to said dispute were given due notice of hearing thereon.

The claimant was charged with a violation of Rule 13(a) of the Agreement and of Rule 18 of the Rules and Regulations for the Government of Shops. After a hearing he was found guilty of both violations and was dismissed from the service of the carrier.

Rule 13(a) requires an employe detained from work on account of sickness or for any other good cause to notify his foreman as early as possible so that his place may be filled. The claimant was detained from work because he was held in jail on a charge preferred by his sister-in-law which was subsequently dropped. He immediately requested his jailer to notify his foreman that he was in jail and could not come to work, but that official neglected to do so. Under these circumstances any disciplinary action imposed for a violation of this rule was unwarranted.

Shop Rule 18 reads as follows:

"The use of intoxicants by employes while on duty is prohibited. Their habitual use, or their use to such an extent as to interfere with proper performance of duty, or the frequenting of places where they are used, is sufficient cause for dismissal."

The claimant was found asleep late in the night of March 1, 1945, in the restaurant adjacent to the railroad passenger station at Waycross. There is some evidence that he had been drinking but all witnesses including a city police officer concur in stating that he was not drunk or disorderly and he was not arrested. Moreover he was not at that time on duty. There is no evidence that he used intoxicating liquors to an extent to interfere with the performance of his duties or that he frequented places where they were used. In an effort to substantiate a charge that he was an habitual user of intoxicants, evidence was introduced of three convictions of the claimant for minor offenses over a period of twenty-three years, which involved either directly or indirectly the use of intoxicants and one ten-day suspension by the railroad for coming on duty eighteen years before while under the influence of liquor. It

cannot possibly be justly claimed that such evidence sustains the charge that he was an habitual user of intoxicating liquor.

There is no evidence to sustain the finding that the claimant violated the rule in question, and any disciplinary action against him was unwarranted.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1946.