

**Award No. 3151  
Docket No. 2982  
2-L&N-CM-'59**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

1. That under the current agreement Coach Cleaner Henry Weathington was unjustly discharged from service on August 12, 1957.

2. That accordingly the Carrier be ordered to restore this employe to service with all seniority rights unimpaired and with compensation for all time lost retroactive to the aforesaid date.

**EMPLOYEES' STATEMENT OF FACTS:** Coach Cleaner, Henry Weathington, hereinafter referred to as the claimant, held a regular second shift assignment on July 14, 1957 with seniority dating of June 8, 1942 as coach cleaner.

Under date of July 23, 1957 the claimant was charged with being intoxicated while on duty at 10:25 P.M., July 14, 1957 and using profane and abusive language towards Sergeant of Police, Mr. R. L. Corbin, resulting in him (claimant) being arrested July 14, 1957 at approximately 10:25 P.M. and being convicted of public drunkenness on July 15, 1957. Copy of the charges are submitted herewith and identified as employees' Exhibit A.

As a result of the charges preferred, investigation was held at the Pensacola Florida Passenger Station on July 29, 1957; transcript of investigation is submitted herewith and identified as employees' Exhibit B.

Under date of August 12, 1957 the carrier's master mechanic wrote the claimant indicating he was guilty of the charges and dismissed from service. Copy of the notification is submitted herewith and identified as Exhibit C.

were changed,) this man had to admit he could not say Weathington was not drunk at 10:25 P.M. which according to the evidence adduced at the investigation he most certainly was. And if Weathington had witnesses to testify to the contrary he should have presented them at the investigation afforded him by management in accordance with the applicable agreement, and not before the City Judge in order to have court records changed.

In conclusion carrier submits that notwithstanding the denial of Weathington there is substantial and convincing evidence in the record to show that he was guilty of the charges against him, and that the carrier did not act arbitrarily or abuse its discretion in reaching that conclusion on the basis of the whole record. Furthermore, in view of the seriousness of the offense, and previous warnings which had been given Weathington with respect to the use of intoxicants, his dismissal was not unreasonable or unjust and should stand. In this connection attention is invited to this Board's findings in previous discipline cases which should be applicable here:

"There was direct conflict in the evidence. The board is in no position to resolve conflicts in the evidence. The credibility of witnesses and the weight to be given their testimony is for the trier of the facts to determine. If there is evidence of a substantial character in the record which supports the action of the carrier, and it appears that a fair hearing has been accorded the employe charged, a finding of guilt will not be disturbed by this Board, unless some arbitrary action can be established. None is here shown. Reasonable grounds exist to sustain the determination of guilt made by the carrier." (Second Division Award 1809, Referee Carter.)

"The control by the employer over the employe is the responsibility of the Management. This Division should be very cautious in substituting its judgment in matters of discipline for the judgment of a responsible employer." (Second Division Award 153, Referee Devaney.)

"\* \* \* It has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed." (Second Division Award 1323.)

**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 were given due notice of hearing thereon.

While there is a conflict in the evidence adduced at the hearing, the evidence of a company police sergeant and two supervisors supports the charge that claimant was under the influence of intoxicants while on duty. Under such circumstances, the carrier's decision that claimant was guilty of the

charge may not be disturbed. Since it appears that claimant had been warned previously about the use of intoxicants while on duty, the penalty is not excessive.

**AWARD**

Claim denied.

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

**ATTEST: Harry J. Sassaman**  
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1959.