

Form 1

Award No. 6410
Docket No. 6260
2-SPT(T&L)-EW-'72

Parties to Dispute:

Dispute: Claim of Employees:

- Findings:

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.

Parties to said dispute waived right of appearance at hearing thereon.

The transcript of the hearing held on June 10, 1971 indicates a painstaking effort on the part of the hearing officer to afford Claimant and his representatives a fair and impartial hearing. Claimants position was that he was under medication prescribed by his doctor and not under the influence of intoxicants as alleged by the Carrier. Rule 10 of the Rules for Employees of the Mechanical Department states:

- "10. USE OF LIQUORS - The use of intoxicants or narcotics by employes subject to duty is forbidden. Being under the influence of intoxicants or narcotics while on duty or their use or possession while on duty, is sufficient cause for dismissal."

The record of the hearing indicates that it was not only well conducted, but that substantial evidence was adduced in support of the charge. We find no fault, therefore, with the process in the handling of this disciplinary situation.

There remains, then, the question of whether the penalty imposed by the Carrier was arbitrary or unnecessarily harsh. We recognize that the Rule cited above permits discharge for this type of violation. But the Claimant had almost twenty-two years of service, was 64 years old and apparently had an unblemished record with the Carrier. It is our judgement, based on these facts that the penalty "did not fit the crime", that it was unnecessarily harsh. Since the Claimant had some medical problems just prior to his discharge, we shall condition his reinstatement on his being physically able to perform his job; we shall grant the Carrier the option of requiring a medical examination to make this determination.

A W A R D

1. Claimant shall be reinstated, with seniority rights unimpaired, but with no back pay.
2. The Carrier may, if it so desires, require a medical examination prior to reinstatement in accordance with the Findings above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Kilgore
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November, 1972.