Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7145
SECOND DIVISION Docket No. 7012
2-AT&SF-EW-'76

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (System Federation No. 97, Railway Employes' Department, A. F. of L. - C. I. O. (Electrical Workers)
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employes:

(1) That the Carrier erred and violated the contractual rights of Mr. R. L. Brand when they removed him from service as a result of an investigation held on January 9, 1974.

(2) That, therefore, Mr. Brand be restored to service with all rights, privileges and benefits restored and that he be compensated for all lost time from December 10, 1973 to July 1, 1974.

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.

The essential facts are not in dispute. Claimant was charged with violating Carrier Operating Rules on the night of December 10, 1973 in that he was intoxicated, quarrelsome and vicious. At the hearing Claimant admitted drinking but could remember very little else. Other testimony, not refuted by Claimant, showed that he was intoxicated and attempted to strike a Carrier official. On January 21, 1974 Claimant was discharged from service.

A claim was filed on his behalf and processed to the General Manager. In June 1974 the General Chairman requested restoration of service on a leniency basis. This was agreed to by the General Manager, and arrangements were made to restore Claimant to his job as Crane Operator on July 1, 1974. When Claimant returned to work he was advised that the Crane Operator's position was not available. His General Chairman was advised that a protest had been made by the Machinist Craft that Claimant was a hazard to himself and others as a Crane Operator. The Carrier's Superintendent offered to

establish a new electrician's position for Claimant or allow him to displace the youngest electrician on the roster. The General Chairman agreed on the condition that if this was not agreeable with Claimant, the matter would be progressed to this Division. Claimant refused to return to service unless he were allowed to return to his former position as a Crane Operator.

Essentially the Organization contends that (1) the discipline imposed was not warranted by the record, and in any event, the discipline imposed was too severe for an employe of 24 years of unblemished service.

The record is quite clear that the action taken by Carrier was warranted. There was ample evidence of rules violations that were not rebutted by Claimant. With respect to the harshness of the discipline, it must be remembered that Carrier agreed to return Claimant to service on a leniency basis to a different position, warranted under the circumstances, and it was Claimant who refused to return.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of October, 1976.