Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7259
SECOND DIVISION Docket No. 7093
2-A&S-CM-'77

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Alton and Southern Railway Company

Dispute: Claim of Employes:

1. That Carman Ronald C. Cooper was unjustly treated by the Alton and Southern Railway Company when said Railroad dismissed him on February 12, 1975.

2. That, accordingly, the Alton and Southern Railway Company be ordered to reinstate this employee with seniority rights unimpaired and compensate him at Carmen's pro rata rate for all time lost, plus, six per cent (6%) interest for all wages deprived of. Also, fringe benefits (vacations, holidays, premiums for hospital, surgical, medical and group life insurance) deprived of since February 12, 1975, until restored to service.

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 Claimant was dismissed on February 12, 1975, following an investigative hearing, for his responsibility "in connection with ... being on the property of The Alton & Southern Railway Company, during your assigned working hours, under the influence of intoxicants, and assaulting a Special Officer of this company at or about 6:45 p.m., Sunday, February 2, 1975."

The Organization raises a procedural objection to the Carrier's conduct at an initial hearing on this matter of February 7, 1975. At this hearing, the Local Chairman of the Organization requested a postponement because of alleged late notification of the Claimant as to the hearing. The officer conducting the hearing, while granting the postponement undertook to obtain

testimony confined solely to the mailing of the notice to the Claimant. The Organization claims this to be in violation of the prescribed procedure set forth in Rule 19, thus leading to the absence of a fair and impartial hearing. This Board does not agree with the Organization's position. The fact that the investigating officer sought to determine the circumstances of the delivery of the notice, perhaps to insure such delivery for a postponed meeting, did not in any way impair the Claimant's rights.

At the postponed hearing, on February 11, 1975, the Claimant failed to appear, but the hearing proceeded, without objection, to determine the circumstances surrounding the charge against the Claimant.

The record discloses nothing to indicate that this Board should in any way disturb the disciplinary action taken by the Carrier following the investigative hearing.

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 29th day of March, 1977.