

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Joint Council Dining Car Employees, Local 495, on the property of the Atlantic Coast Line Railroad Company, for and on behalf of Mr. C. C. Edwards, Waiter, who was dismissed from Carrier's service on August 4, 1945, on charge of intoxication, while off duty, on July 26, 1945, in violation of the current agreement and in abuse of the Carrier's discretion; that Claimant be returned to the service without prejudice and to be compensated to the extent he has suffered.

OPINION OF BOARD: It is admitted here that Claimant was released from duty at 2:00 p. m.; shortly thereafter he "took a few bottles of beer"; at 3:45 p. m. of the same day he was in a Pullman car of the Carrier; the police smelled liquor on him; he was there arrested and charged with intoxication; and that he pleaded guilty and was fined.

He was charged by the Carrier with being under the influence of intoxicants on company property in violation of Rule 5 of the Manual of Instructions; an investigation was had resulting in Claimant's discharge from the service. Claimant does not deny that he was intoxicated. Rule 5 is "Employees shall not use intoxicating liquors". Claimant submits that the rule means employees shall not use intoxicating liquors while on duty or to such an extent while off duty as to impair the efficiency of their work and that the Carrier cannot, by operating rules, regulate the private lives of its employees.

Claimant presents an interesting argument on the theory of what the rule ought to be. But the parties and this Board are confronted with the rule that is and the question was it violated. The violation of the rule is admitted. It further appears that the rule had been previously violated by Claimant and the rule called specifically to his attention. He was advised that the rule was to be obeyed and of the penalty for failure to obey it. The rule is one for the protection of the Carrier, of its employees and the traveling public. The rule contains no exceptions. It says "Employees shall not use intoxicating liquors". It is clear and its meaning certain. The Claimant here takes the position apparently that it was his right to construe exceptions into the rule and to observe it when, if and as he deemed it fitting and proper to do so. The rule does not permit of any such a application. Claimant accepted and continued in the Carrier's employment knowing the full import of the rule. He had two alternatives—either comply with the rule or leave the service. He did neither. Neither does he indicate a willingness hereafter to comply with the rule as written. The Carrier enforced the rule in the one effectual way left open to it, by dismissing the Claimant from its service. Its decision should not be disturbed.

The Carrier's presentation justifies comment. The finding of guilt or innocence of the charge should be based upon the facts developed at the in-

vestigation. The investigation here was held on August 4, 1945. The Carrier submits for our consideration affidavits of witnesses dated in March 1946 and a copy of the police record certified May 1, 1946. Such showings, obviously secured after the investigation, are not to be considered by us in reviewing the fact question presented at the investigation, nor in reviewing the question of guilt or innocence. The evidence developed at the investigation controls.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice or hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The violation of the clear meaning and purpose of the rule being admitted, the finding necessarily is that the Carrier has not violated the Agreement and has not abused its discretion in dismissing the Claimant under the facts here shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1946.