

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad Company, that W. R. Hamlet was unjustly dismissed from the service on November 29, 1946, and

"a" shall be restored to his position of ticket agent at Lakeland, Florida, with seniority and pass rights unimpaired, and

"b" shall be paid for all time lost from January 1st, 1947 until restored to his position at Lakeland, Florida.

OPINION OF BOARD: This is a discipline case. The Claimant, W. R. Hamlet, a regularly assigned ticket agent at Lakeland, Florida, was charged by the Carrier with violation of its operating rules G & K, which read as follows:

"G. The use of intoxicants by employees while on duty is prohibited. Their use, or the frequenting of places where they are sold, is sufficient cause for dismissal."

"K. Employees and others authorized to transact business at stations, on or about trains, must be orderly and avoid annoyance to patrons."

The offense charged against Claimant arose out of the following incident. On the afternoon of September 21, 1946, Hamlet allegedly in an intoxicated condition appeared in the White Waiting Room in the ticket office at Lakeland, Florida and allegedly profanely and boisterously berated the colored maid for failure to keep the waiting room in a clean condition. His conduct was alleged to be upsetting to the employees in the office and of annoyance to the patrons in the Waiting Room. It appears from the record that at the time of this incident Hamlet was on an indefinite leave of absence because of illness, since August 15, 1946. An investigation of the incident was conducted by Carrier and Hamlet was notified to appear for investigation by letter from the Trainmaster, in which letter Hamlet was told to advise when he would be physically able to appear. In response to this letter Hamlet appeared for investigation on October 27, 1946. At the investigation Hamlet was read extracts from statements of employees at the ticket office bearing on the elements of the offense charged and was asked what he had to say to them. In effect, Hamlet categorically denied being boisterous or intoxicated in response to questioning on each of the witnesses' statements. On November 29, 1946, Hamlet was advised that he was dismissed from the service for having

been in an intoxicated condition at the Lakeland passenger station in violation of Rules "G" and "K".

The Employees assert substantially that Hamlet was not afforded a fair hearing and that the charges were not proven.

The rules covering procedure in discipline cases in the Agreement between Carrier and Employees read as follows:

"ARTICLE 18 Investigations and Discipline.

(a) Employees will not be suspended without just cause, and will not be discharged without an investigation should they request it.

(b) An employee disciplined, or who considers himself unjustly treated, shall have a fair and impartial hearing, provided, written request is presented to his immediate superior within ten (10) days of the date of the advice of discipline, and the hearing shall be granted within ten (10) days thereafter.

(c) A decision will be rendered within ten (10) days after completion of hearing. If an appeal is taken, it must be filed with the next higher official, and a copy furnished the official whose decision is appealed within thirty (30) days after date of decision. The hearing and decision on the appeal shall be governed by the time limits of the preceding section.

(d) At the hearing or on the appeal under Sections (b) and (c) the employee may handle his own case personally or may be assisted by an employee of his craft or by one or more duly accredited representatives.

(e) The right of appeal by an employee, assisted by an employee of his craft or by one or more duly accredited representatives, up to and inclusive of the highest official designated by the Railroad to whom appeals may be made, is hereby established.

(f) An employee, on request, will be given a letter stating the cause of discipline. A transcript of the evidence taken at the investigation or on the appeal will be furnished on request of the employee or representative.

(g) If the final decision decrees that charges against the employee were not sustained, the record shall be cleared of the charge; if suspended or dismissed, the employee will be returned to former position and paid for all time lost.

(h) Committees of employees shall be granted leave of absence and free transportation for the adjustment of differences between the Railroad and the employees."

As to whether or not Hamlet was afforded a fair hearing, we refer to the record. It appears that he was advised of the charges against him in the letter of October 16, 1946, and then was given almost unlimited time in which to present himself for investigation. The investigation was held eleven days thereafter, presumably by arrangement between Hamlet and the Trainmaster. Certainly, this afforded Hamlet sufficient opportunity to obtain such statements or affidavits as he saw fit and to bring such witnesses as he deemed advisable. He chose not to bring any witnesses or introduce any evidence except his own testimony. At the time of the investigation he was asked if he had been notified, if he was ready to proceed and if he desired representation, to which he responded that he was notified, was ready to proceed and did not desire representation. Before the close of the investigation he was asked if he considered the investigation fair, to which he replied that he did. The Employees make much of the fact that Hamlet was not afforded an opportunity to confront the witnesses against him and to cross-examine them. At that stage of the proceedings there was no obligation on the part of the employer to afford such opportunity. Any failure to secure that opportunity was the

fault of Hamlet and not of the Carrier. It must be borne in mind that this was still an investigation. After its completion and notice of assessment of discipline it appears clear that under paragraph "b" of Article 18, Hamlet still had the right to demand a full hearing. Why he chose not to exercise that right does not appear from the record. He seemed content merely to ask the Trainmaster to consider (1) a letter from his doctor setting forth that he had seen Hamlet at 3:30 P. M. on September 21, 1946, and had administered a sedative and Hamlet was not intoxicated at that time, (2) affidavits from members of the Elks' Lodge at Lakeland indicating that before going to the station ticket office Hamlet refused to drink intoxicants with them and that he was not perceptibly under the influence of intoxicants and was entirely normal and sober.

On the whole we cannot say that Hamlet was deprived of any of his rights under the Agreement in the conduct of the proceedings leading up to the discipline assessed.

Were the charges proven? It is generally recognized that in the conduct of hearings and investigations neither technical nor legalistic rules of evidence are binding. The statements of the employes were therefore entitled to consideration on the investigation. It is not the function of this Board to weight conflicting evidence in a discipline case and if the evidence is such that, if believed, it will support the findings of the Carrier, the judgment of the Carrier will not be disturbed. In the statements of the employes there is ample evidence to sustain the findings of intoxication and boisterousness. To detail them here would unduly prolong this Opinion.

We come now to the question of the severity of the punishment. It is a well-established principle that although this Board has the power to order the reinstatement of an employe, it should be very cautious in the exercise of this power. It should not exercise it unless the evidence clearly indicates that the employer has acted arbitrarily, without just cause, or in bad faith. The wisdom of this principle can hardly be doubted. It is the Carrier's responsibility to run the railroad and the substitution of the judgment of this Board as to what is appropriate disciplinary measures for that of the Carrier, except in rare cases, would impede the Carrier in discharging that responsibility. In this case we believe the discipline was extremely harsh and arbitrarily imposed. The surrounding factors leading up to the violation and the past record of the employe were not, in our opinion, accorded sufficient weight in arriving at the penalty. Let it be here clearly understood that we hold no brief for an employe who reports for duty while in an intoxicated condition or becomes intoxicated while on duty. Nor do we condone in any way an employe who, while off duty, conducts himself in an intoxicated or annoying manner on the Carrier's property. We make no distinction between on or off duty insofar as the violation of Rules "G" and "K" are concerned. We do feel, however, that there is a difference with respect to the gravity of the offense and the punishment deserved. We recognize that we have in some awards upheld the penalty of dismissal because of a violation of a rule covering intoxication while off duty and on Carrier's property. We also recognize that carriers have treated more flagrant violations of similar rules as being subject to lesser penalties. See Awards 3411, 3498. When we consider that Hamlet was continuously employed by the Carrier for 20 years with no apparent blemishes (except suspicions) on his record, that he was suffering from a nervous disorder and was off duty at the time, we cannot but feel that the penalty of dismissal was arbitrary or capricious. Any punishment short of dismissal which the Carrier might have assessed would indicate that some thought had been given to these factors. We cannot help but feel that no thought was given to such obviously relevant factors and hence the discipline imposed was capricious or arbitrary.

We think that Claimant had suffered sufficiently for his transgression and hence he should be reinstated with seniority rights unimpaired but with no right to monetary losses because of time lost.

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

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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

That discipline assessed was to harsh and arbitrarily and capriciously imposed.

AWARD

Claimant should be reinstated with seniority and pass rights unimpaired but without pay for lost time.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1948.