Award No. 4359
Docket No. CL-4383

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Norbert C. Repman, Crew Dispatcher, Ebenezer, New York, be returned to service with all rights unimpaired, and compensated for all monetary loss sustained dating from August 23, 1946, until adjusted. (Docket C-319)

OPINION OF BOARD: Claimant was found guilty after trial of the offense of "Violation of Rule G, Book of Operating Signal and Interlocking Rules, reporting in an unfit condition for duty", and dismissed.

Without reviewing the extensive record of the trial which was conducted in an eminently fair manner by Carrier's Train Master as Presiding Officer, suffice it to say that there was substantial evidence upon which to base a finding of guilt of the charge and we are not disposed to disturb the Carrier's finding in that regard.

With respect to the quantum of punishment, however, we hold a different view. We are conscious of the obligation imposed upon a Carrier to run a railroad and of the general policy of the Board not to interfere with the assessment of discipline by a Carrier unless arbitrarily or capriciously imposed. We believe, however, that in this case the measure of discipline was somewhat arbitrary.

Before the trial on the charge mentioned above, Claimant was requested to appear for investigation "in connection with you reporting for duty, Friday, August 23, 1946 in an unfit condition for duty and assaulting an official of this Company." After investigation, the latter part of the charge was dropped. Reference to the incident giving rise to the investigation of the alleged assault was made only in one instance on the trial by the presiding officer. However, as we have indicated above, not in such a manner as would lead us to believe that it resulted in an unfair trial on the charge of which Mr. Repman was found guilty. It must be remembered, however, that the only offense of which he was found guilty was reporting in an unfit condition for duty on the date indicated. That in itself is, of course, a fairly serious offense. Nevertheless, the quantum of discipline imposed by the Carrier indicates that the alleged assault in some way influenced its judgment. It was asserted on the presentation of this docket that the incident was considered as supporting the fact of the claimant's intoxication which indicates to some extent that the incident was not completely disregarded as we think it should have been under the circumstances. Over a period of thirty-three years' service claimant's record shows no previous incidents of reporting

for duty in an unfit condition. True, he has been reprimanded on occasion but it is well-nigh impossible to serve over such a long period of time, and for many years of such service, in the responsible position of Crew Dispatcher without committing an error of judgment or slipping up on a detail which might eventually bring about a reprimand. The evidence against claimant at the trial, while sufficient, was not conclusive: there were witnesses who testified on his behalf, stating that he was fit for duty, and there was evidence to show that he was ill and was required to take medicine which could have an effect similar to intoxication. We think these extenuating circumstances should have been taken into consideration in assessing punishment, and the penalty of dismissal indicates that they haven't. We think some penalty, even though severe, but short of dismissal, would indicate that proper consideration had been given all factors. By being held out of service while this case has been pending, claimant has, in effect, suffered over a two-year suspension. We believe that was sufficient discipline for the offense of which Mr. Repman was found guilty. Accordingly, we direct that the claimant be reinstated with seniority rights unimpaired, but without compensation for 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 the discipline was too harsh and arbitrarily imposed.

AWARD

Claimant reinstated with seniority rights unimpaired but without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1949.