

Award No. 4764

Docket No. MW-4657

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

SOUTHERN RAILWAY COMPANY

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

(1) That the Carrier violated the Agreement by dismissing B&B Helper and Locomotive Crane Fireman, C. S. Rorer without good and sufficient reason on July 6, 1948;

(2) That the claimant C. S. Rorer be reinstated with all his rights unimpaired;

(3) That B&B Helper and Locomotive Crane Fireman C. S. Rorer be reimbursed for all wages lost because of the Carrier's improper and unfair action.

OPINION OF BOARD: This is a discipline case. Claimant entered the service of the Carrier and established seniority as of May 17, 1945, and January 22, 1946 he established seniority as a Pile Driver and Locomotive Crane Fireman. On June 11, 1948 two city police officers visited claimant's home to investigate a report that he and his wife were illegally selling whiskey. While his wife was having an altercation with the officers, claimant fled in his automobile. He was apprehended, arrested and tried, being found guilty of illegal possession of eleven pints of tax paid whiskey for sale, and of careless and reckless driving. He was given a suspended sentence and fined \$150.00.

On July 6, 1948 claimant was given a hearing by Carrier on the charge of possession and sale of whiskey in violation of the County law, and of being arrested and found guilty of said charge, and also of conduct unbecoming him as employe of Carrier. He admitted guilt as to the violation of law, but denied the charge of conduct unbecoming an employe of Carrier. Claimant was found guilty as charged and dismissed.

The fact that claimant was found guilty of the illegal sale of whiskey, and of careless and reckless driving in an effort to escape arrest, plus the notoriety gained as a result thereof, constitutes substantial evidence of conduct unbecoming an employe of Carrier, whether on or off duty. However, we are of the opinion that there are mitigating circumstances in this case. Much if not all of the notoriety of claimant's arrest resulted from the actions of his wife, and her altercation with the officers. During the time of his service, claimant has carried on his duties in an efficient and proper manner; he did not use or sell whiskey on the Carrier's property, nor did he sell whiskey

to other employees. The claimant was never furnished with any company rules, and there are no company rules setting forth the description of just what constitutes conduct unbecoming of an employee of Carrier. It is reasonable to believe that claimant had no reason to know or believe that this violation of law he committed outside working hours would cause him to lose forever his rights to work for Carrier.

This Division has consistently held that it will not substitute its judgment for that of the Carrier in disciplinary matters unless the evidence shows conclusively claimant was not guilty as charged or that the action of the Carrier was arbitrary or capricious, or that the penalty assessed too severe. There is no question that the claimant was guilty as charged and that punishment was required. However, in view of the mitigating circumstances, we believe the penalty assessed by Carrier was too severe. We believe the claimant has suffered enough penalty by his dismissal from the service of Carrier since July 6, 1948 and that he should be reinstated, without reimbursement of wages lost since that date. It follows that claims (1) and (3) will be denied and claim (2) sustained.

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 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

That the Agreement was violated as charged.

AWARD

Claims (1) and (3) denied. Claim (2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1950.