

Award No. 4942

Docket No. CL-4842

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that: M. T. Power, Yard Clerk, Memphis, Tennessee, be reimbursed for time lost from March 10, 1948, to January 20, 1949, during which period he was unjustly and erroneously held out of service.

OPINION OF BOARD: Claimant M. T. Power was charged with being intoxicated during the early morning hours of March 10, 1948, in violation of the General Regulations promulgated by the Carrier. The only regulation that need be here cited is Regulation No. 12 which provides: "The use of intoxicants or narcotics is prohibited." After notice and hearing, Claimant was dismissed from the service.

The record shows that on or about 2:20 A.M., March 10, 1948, Claimant was in the Chief Caller's Office evidently sleeping. An employes' train, referred to throughout the record as a "hoodlum," came in and some employe assisted Claimant to board the train. The Conductor-Flagman of the "hoodlum" complained to the General Yardmaster who caused Claimant to be removed from the train. The General Yardmaster testified that Claimant was intoxicated, that he wasn't walking steadily, that he acted like he was intoxicated, and that he smelled something like liquor on his breath. There is other evidence in the record tending to sustain the charge including the statement of the Claimant himself that he had had two or three beers in the afternoon. Claimant denied that he was intoxicated. As we have said many times, where the evidence is sufficient, if believed, to sustain disciplinary action, the findings of the Carrier will not be disturbed by this Board. In other words, this Board will not weigh the evidence or determine the credibility of witnesses under such circumstances.

The Organization contends, however, that the discipline assessed was excessive in any event. The record shows that Claimant had worked his regular assignment 7:00 A.M. to 3:00 P.M. on that day. He created no disturbance during the period here involved and evidently was intent upon the minding of his own business. He was off duty at the time the events heretofore described took place. He says he was going out for his overcoat, the inference being that it was at Nonconnah, one of the points served by the employes' train. In any event, he states positively that he intended to get off at Nonconnah. The record shows that Claimant had been employed by the Carrier for twelve years and that he had never been previously disciplined. The violation did not involve the public or the goodwill of the Carrier.

There is some evidence that there was ill feeling on the part of the General Yardmaster toward the Claimant, all of which the latter emphatically denies. There were special circumstances of a personal nature which the Carrier should have given a mitigating effect. Considering all of these facts and circumstances, we conclude that the dismissal of Claimant from the service was not warranted. We think the very maximum penalty which the evidence will sustain is a suspension of three months. Consequently we direct the restoration of Claimant to service with seniority rights unimpaired as of June 10, 1948. The claim will be sustained from June 10, 1948, to January 20, 1949, the date Claimant was restored to service, for all time lost, less any amount earned in other employment. Rule 25, current agreement.

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 Employee involved in this dispute are respectively carrier and employee 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.

AWARD

Claim sustained per Findings and Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1950.