

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Angus Munro—Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

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

1. The Agreement governing hours of service and working conditions between the parties was violated by the Carrier at Florence, S. C., on November 30, 1948, in the treatment accorded Chief Clerk Mannie Davis in dismissing him from service, and

2. Employee Mannie Davis shall be restored to service with all rights unimpaired and compensated for wage loss sustained beginning November 30, 1948, and subsequent thereto until restored to service.

OPINION OF BOARD: Carrier acting by and through one Gilhooley duly cited Claimant for alleged violations of certain operating rules, to-wit: being absent from duty without proper permission and the use of intoxicants, upon specified dates.

Before entering upon a discussion of and comment on the evidence adduced at the hearing on the property we think it proper to set down a few observations concerning the nature of the rules we are here concerned with. Both rules are very important in that both directly bear on and affect Carrier in its relationship to the public in general and to its patrons in particular. The business of Carrier is clothed with a public interest hence the public, as potential patrons, are entitled to and have a right to expect while Carrier has the corresponding duty to man its service with steady, sober, serious and industrious employees.

From the standpoint of the employee the problem is equally serious in that his means of earning a livelihood and his future are at stake. This means and in fact a burden is imposed on Carrier not to lightly or capriciously determine the guilt or innocence of one accused. But once guilt is determined the degree of punishment to be fixed should not overlook the question of whether it is fair to society as well as to the transgressor.

Coming now to the case before us: we find testimony, aside from that given by Claimant, which if believed would support the finding. We cannot say the hearing officer acted in an arbitrary manner in believing said testimony. On the contrary Claimant's plea appears to be in the nature of a plea of confession and avoidance.

It is well settled this Board has the authority when it deems the punishment fixed to be unduly harsh and severe to alter or modify the same. Would such action be justified, that is to say, what sort of person would the Board be assisting by extending lenience to? Claimant was 56 years of age at the time of hearing with a total of 41 years in Carrier's service. Furthermore his physical condition had become impaired to a considerable extent in such service. Apparently he was of excellent Christian character being a member of the Baptist Church and Sunday School and attending religious services regularly. *This is the type of man who promised to mend his ways.* We think he is worthy of belief especially so inasmuch as upon one of the times alleged the offense consisted of leaving in order to procure *some fresh pork, the Claimant having been advised by his shopkeeper that some hogs had been killed.* It is true the gravamen of Rule G consists of the use of intoxicants the fact is Petitioner was not intoxicated as we ordinarily think of one being deprived of the normal use of his faculties while in such state, nor do we find evidence of harm coming to anyone.

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

It is accordingly ordered by the Board that Claimant be and he is hereby restored to service with all employment rights. His return to active duty is subject to the following terms and conditions, to-wit: (a) Claimant exhibit to Carrier a medical certificate issued by a reputable physician attesting to Claimant's physical ability to perform the duties of a job other than that from which Claimant was discharged. In all other respects the claim is denied.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 13th day of March, 1952.