

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Livingston Smith, Referee

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**  
**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

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

(1) The Carrier violated the effective agreement when they dismissed Section Laborers Charlie Wright and O. C. Perez from service on September 22, 1950;

(2) Section Laborers Charlie Wright and O. C. Perez be returned to service with seniority and vacation rights unimpaired and compensated for wages lost subsequent to September 22, 1950.

**OPINION OF BOARD:** This claim arises out of disciplinary action imposed by the Carrier on employees O. C. Perez and Charlie Wright. Each has been discharged for being drunk and disorderly.

The record discloses that each of the employees went off duty at 5:00 P.M. on July 26, 1950. At 6:30 P.M. they were walking along the tracks and across company property when approached by Yardmaster L. L. Miers who advised them to get off company property immediately. The claimants failed to comply with the Yardmaster's instructions. A Yard Clerk called Special Officer L. N. Taliaferro who in turn called city police, and had them removed to the city jail, where they were charged with being drunk and disorderly.

The investigation was held on September 18, 1950 and each of the claimants were notified on September 22 that they had been found guilty, and stood dismissed from service.

The record shows that the claimants had moved from company property at the time of their arrest by city police. That claimant Perez was drunk as charged is clear. Both Yardmaster Miers and Special Officer Taliaferro so testified. Perez pled guilty to the charges and was fined therefor in municipal court. At the investigation evidence was given that he was being held erect by claimant Wright. Also at the hearing Perez admitted that he was drunk.

The evidence concerning claimant Charlie Wright is neither as conclusive or uniform as that adduced in regard to Perez. Special Officer Taliaferro testified that Wright was drunk. Yardmaster Miers expressed the opinion

that he was not. Wright while admitting that he ultimately plead guilty to a drunk and disorderly charge, and was fined therefor, denied at the hearing that he was either drunk or disorderly.

There exist in the record other mitigating and extenuating facts and circumstances concerning claimant Wright which do not apply to claimant Perez.

Prior Awards of this Board in a substantial number held that where there is positive evidence of a probative nature, conflicts of evidence will not be resolved. Likewise, it has been held that a disciplinary action predicated on substantial evidence that substantiates the charges will not be overturned, save and except when the penalty invoked is excessive when considered in light of the nature of the violation and the circumstances surrounding same.

The Board is of the opinion that the charges against claimant Perez were fully proven and that the action of the Carrier in discharging Perez should not be overruled.

The Board is of the further opinion that while claimant Wright was properly subject to discipline, the penalty of discharge is, in the premises, excessive and should be modified to the extent of reinstatement without loss of seniority or other benefits; said reinstatement to be effective as of his last day of employment but without restoration or reimbursement for any loss of earnings.

**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

Claims disposed of in accordance with the above Opinion.

#### AWARD

Claims disposed of in accordance with the above Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

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

Dated at Chicago, Illinois, this 14th day of May, 1952.