

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David R. Douglass, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

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

(a) The Agreement, governing hours of service and working conditions, between the Railway Express Agency, Incorporated, and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective October 1, 1940, was violated at the Palestine, Texas Agency in the treatment accorded McGaines Ellis by dismissing him from service, effective February 23, 1948, following an alleged investigation held February 20, 1948;

(b) He shall be returned to service with seniority unimpaired and compensated for salary loss sustained retroactive to and including February 23, 1948; and

(c) Management shall be required to make available to employee representatives the daily payroll covering the Palestine, Texas Agency operations for the purpose of showing the gross amount of Employee Ellis' salary loss in pursuance of his relative seniority level.

OPINION OF BOARD: Here, the Claimant was charged with violation of Rule 831 of General Rules and Instructions by drinking intoxicating liquor and being in an intoxicated condition the morning of February 10, 1948.

The record indicates that the Claimant was afforded an investigation which was properly conducted throughout. Further, the Claimant was given a second hearing several days after he had been released from the service as a result of the investigation of February 20, 1948.

The evidence, as appears in the record of investigation, is adequate and upholds the Carrier in their finding the Claimant guilty of rule violation.

We, of this Board, believe that the decision of the Carrier as to guilt or innocence should not be disturbed in matters where there is substantial evidence to support such decisions. We further believe, as has been discussed at length by Judge John W. Yeager in Award No. 5835 of this

Division, that this Board may examine the character and extent of discipline imposed on the property and if deemed improper to adjust it.

In this present case, the rule violation was serious as well as being willful. The Claimant's seniority dated less than four years.

Based upon the entire record, we are of the opinion that the Carrier has not acted in bad faith in its determination of the Claimant's guilt nor was the discipline assessed excessive under the circumstances of this particular case.

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 not violated.

AWARD

Parts (a), (b) and (c) of the Statement of Claim are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 28th day of July, 1952.