

Award No. 8689
Docket No. MW-8968

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement, when on April 10, 1956, it dismissed Section Laborer Lawrence Williams from its service;

(2) Section Laborer Lawrence Williams be restored to service, with seniority, vacation and other rights unimpaired and reimbursed for all wage loss suffered since April 29, 1956 because of the violation referred to in Part (1) of this claim.

OPINION OF BOARD: The facts of record in this case need not be repeated here.

Nineteen denial awards of this Division have been cited by or in behalf of Carrier, many of which have no bearing on the issue before us.

One of them, however, does cover an important fact in this case because Claimant was on his rest day when the incident occurred. We quote from Award 6332 (Smith):

" * * * What an employe does when off duty and not on the property of his employer is no concern of an employer and will not warrant disciplinary action unless such acts impair his ability or render him unfit to perform his duties after reporting for duty. * * * "

The same pronouncement is found in two awards cited in behalf of the Organization:

Award 2991 (O'Malley):

"* * * From that evidence, all reasonable men must conclude that there was no use of intoxicants on the property of the Carrier; there was no intoxication; there was nothing which in any way would or could affect the Company business."

Award 3411 (Tipton):

"What an employe does when off duty and not on the property of the Carrier would not justify discipline so long as his conduct does not interfere with his work. * * *"

There is no showing here that the incident complained of affected claimant's ability to perform his work.

Argument made in Carrier's behalf, however, contends that in numerous awards we have recognized that certain conduct of an employe while he is off duty and off company property will subject him to discipline by Carrier the same as if he were on duty. Award 5104 (Parker) is cited, a portion of which reads:

" * * * Management is responsible for the conduct of its Pullman Porters and duty bound to man its cars with individuals who merit the confidence and trust of the traveling public and can be depended upon to protect the safety and well being of individual passengers. In fact it would be derelict in the performance of its obligation to the traveling public if, convinced such employes no longer possess the attributes to which we have referred, it continues to retain them in its employ in that capacity. * * * "

We find no fault with such principle.

While we have no intention of reflecting in any way whatever upon the status, social or otherwise, of a laborer, by no stretch of the imagination can we see how the conduct of a section laborer at Bowling Green, Kentucky, on his rest day, and off company property, could ever threaten the safety and well-being of the traveling public or their trust and confidence in a carrier.

The claim will be sustained, subject to Rule 27(f).

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 Employe involved in this dispute are respectively Carrier and Employe 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 in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 16th day of January, 1959.

DISSENT TO AWARD NO. 8689, DOCKET NO. MW-8968

The majority opinion in Award No. 8689 is in gross error in declaring Claimant not guilty as charged and ordering his restoration to service with pay for all time lost, subject to Rule 27(f), in the face of a record clearly proving Claimant guilty as charged.

On April 10, 1956, Claimant was advised that he was dismissed from the service of the Carrier on charges set forth in the Division Engineer's letter of that date. This letter read in part as follows:

"It has been brought to my attention that you were arrested at 5:45 P.M. on March 31, 1956 by a Police Officer of the City of Bowling Green, Ky., and were charged with having alcoholic beverages for sale, under Police Court Docket #36597 and selling alcoholic beverages, Police Court Docket #36600 and that you pleaded guilty to both charges and was find \$109.00 on each of these charges, making a total of \$218.00.

"Rules and instructions in the Maintenance of Way Department of this Railroad Company prohibits their employees from trafficking in intoxicants. This is covered by Rule G-1 of Page #12 of the Book of Rules." (Emphasis added)

General Rules G-1 and G-2 governing employees in the Maintenance of Way Department of this Carrier read as follows:

"G1. Any employee who is convicted in an established court of unlawfully having had in his possession or unlawfully trafficking in commodities, such as intoxicants, or drugs, such as morphine, cocaine, opium, etc., will be subject to dismissal." (Emphasis added)

"G2. It is required that employees be of good moral character, avoiding violations of the law, which always reflect on and thus injure both their fellow employees and the Company."

Following his dismissal on April 10, 1956, Claimant made a request to the Division Engineer for a formal hearing, which was conducted on April 25, 1956. Transcript of the investigation appears in the record.

Claimant appeared and was represented at the hearing by a member of the Organization. He admitted he had a fair and impartial hearing.

When a representative of the Police Department entered his premises with a search warrant, Claimant denied having any liquor. However, two half-pints of whisky were found and confiscated by the Officer. This is admitted by Claimant.

The following is taken from the Bowling Green Police Department arrest book:

"Lawrence Williams (col) 615 Kentucky Street Arrested 5:45 P.M. 3/31/56 at Kentucky and Sixth Street, having alcoholic beverages for sale. Fined \$109.00 on plea of guilty. Docket #36597. Arrested by officers Eatherly, S. Young Ashby, Brumit, L. Young, and M. Lowe.

"Lawrence Williams, Docket #36600. Selling alcoholic beverages without license. Fined \$109.00 on plea of guilty Policy Court. Time, place arresting officers same as above. Total fines \$218.00."

Claimant pleaded guilty to the charges and paid a total fine of \$218.00.

Claimant admitted at the investigation that he was required to be conversant with and obey the rules and special instructions of the Carrier and, if in doubt as to their proper meaning, must apply to the proper authorities for an explanation.

For the above reasons, we dissent to this Award.

/s/ C. P. Dugan

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ W. H. Castle

/s/ J. E. Kemp