

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

**THE DETROIT AND TOLEDO SHORE LINE RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5473) that:

(1) The Carrier violated the rules of the Agreement between the Brotherhood and the Carrier effective January 1, 1960, when following investigation held on February 13, 1963 it arbitrarily and without justification dismissed Material Checker and Clerk, Barney C. Bader from service.

(2) Material Checker and Clerk, Barney C. Bader shall now be reinstated to the service of the Carrier with seniority and all other rights unimpaired, and his record be cleared of all charges.

(3) Material Checker and Clerk, Barney C. Bader shall now be compensated for any and all wage loss suffered as a result of his dismissal.

OPINION OF BOARD: Claimant here was dismissed from the service of this Carrier after having been charged with and found guilty of being under the influence of intoxicants while on duty.

The Brotherhood's appeal from Carrier's decision to this Board is based primarily on the contention that the evidence upon which the dismissal was based was insubstantial and inconclusive.

After careful review of the entire record, including the transcript of the hearing (investigation), the Board finds the evidence relied on by the Carrier, **standing alone**, might be considered substantial enough to lead one reasonably to believe that Claimant was, in fact, intoxicated while on duty. For example, the result of the blood test voluntarily taken by the Claimant and the testimony of eye-witnesses as to his slurred speech, unsteady walk and the slight odor of alcohol on his breath, would lead fairly to the conclu-

sion that he was "under the influence". But in addition to this there was evidence of probative value that Claimant suffered from an injury to his inner ear; that he had been consuming excessive quantities of a medication described as Terpin Hydrate and Codeine; that he had been hospitalized because of "a history of nausea, dizziness, and an awkward gait of 8 months duration . . ." (Brotherhood's Exhibit D); that he exhibited symptoms of Miniere's Syndrome, associated with a chronic ear problem, and characterized by slurring of speech and staggering. It is also significant that this record is completely devoid of any evidence showing either possession or consumption of any intoxicating liquor by this Claimant.

In view of the foregoing, the Board finds and holds that the evidence in this record fails to support the degree of discipline assessed against the Claimant. To the extent of dismissal from service, therefore, the discipline is set aside, and Claimant will be restored to duty, without loss of seniority or his other contractual rights, but only upon the presentation to the Carrier of competent medical evidence of his physical ability to perform the duties of his former position without endangering his own safety or that of his fellow employees. The claim for compensation for wage loss, if any, is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 disposed of in accordance with the foregoing Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September 1964.