

Award No. 13685

Docket No. CL-15222

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**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5665) that:

(a) The Southern Pacific Company violated the Agreement at San Jose, California, when, on December 19, 1963, it arbitrarily suspended Mr. C. L. Coates from service following unconscionable and coercive treatment; and again on January 2, 1964, when it dismissed Mr. C. L. Coates from service based on charge not proved and notwithstanding glaring procedural violations; and,

(b) The Southern Pacific Company shall now be required to restore Mr. C. L. Coates to service with seniority and all other rights unimpaired, including but not limited to hospitalization, life insurance, and hospital, medical and surgical benefits for dependents; and to allow compensation for all wage loss suffered from December 19, 1963, until restored to service with all said rights unimpaired.

OPINION OF BOARD: The evidence of record here clearly establishes that Claimant was guilty of violating Rule G of the Carrier's General Rules and Regulations on December 19, 1963, as charged. Rule G prohibits the use by employees of intoxicants while on duty.

Petitioner's contention that Claimant's procedural rights were violated is not well taken. His successful attempts to avoid service of notice of the investigation and his subsequent failure to appear might fairly be attributed solely to a desire on his part to thwart the orderly disciplinary processes of the Agreement in order to avoid having to defend against the charge of rule violation. In any event, the registered mailing of the notice to appear and answer the charge can properly be held as constructive delivery of such notice. Accordingly, the Board finds the requirements of due notice under Rule 47 were met in this case.

It is also clear from the record that Claimant's absence from the investigation was the result of his own actions in avoiding service of the notice. He, therefore, cannot be heard to complain now.

Moreover, the facts establish that Claimant did not attempt to relieve

himself from duty at his regular quitting time of 6:30 P. M. Instead he chose to make final delivery of his switch lists at 8:30 P. M. It follows that he was on duty until that time. He was, in fact, paid overtime compensation. The only plausible reason why Claimant should have attempted at 8:30 P. M. to record his quitting time as of 6:30 P. M. obviously was to avoid the "while on duty" provision of Rule G.

The Board's sustaining Award 12812 cited as in point is neither persuasive nor controlling. In that case there was no showing that the Claimant's absence was due to his own conduct or fault. There it was properly held that an "accused must be afforded the opportunity to be present at the investigation . . . and must have the opportunity of cross-examining the witnesses . . ." (Emphasis ours.) Here Claimant had that opportunity but of his own volition chose not to take it.

Accordingly, the Board finds no valid reason for disturbing the discipline imposed. The claim, therefore, 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 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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1965.