Award No. 14800
Docket No. TE-15650

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly The Order of Railroad Telegraphers)

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the Southern Railway, that:

1. Carrier violated the Agreement when it dismissed W. O. Carroll on February 5, 1964.

2. Carrier shall reinstate W. O. Carroll with all rights unimpaired.

OPINION OF BOARD: Organization's General Chairman, in a letter to this Carrier dated May 27, 1964, states:

> "General Manager Strench in his declination states he has carefully reviewed the record in this case and find that the evidence adduced at the investigation clearly and conclusively supports Mr. Carroll's dismissal, that he readily admitted that he was guilty of conduct unbecoming an employe and indulged in intoxicating beverages on Company's property as charged."

In stating the Organization did not agree with the General Manager, the General Chairman said he "felt the discipline administered, i.e., held out of the service since January 20, 1964 is far too severe in this particular case and that claimant Carroll is deserving of the opportunity of performing the work as Agent-Telegrapher at Oxford, N. C. . . ."

Organization's claim is, in reality, a plea for leniency. This Board has held many times, beginning with Award 6085, (Whiting) that reinstatement on a leniency basis of solely a matter of managerial discretion.

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 Employes involved in this dispute are respectively Carrier and Employes 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 23rd day of September 1966.

DISSENT TO AWARD NO. 14800, DOCKET NO. TE-15650

I cannot accept the Opinion of the majority that "Organization's claim is, in reality, a plea for leniency." A plea for leniency, as that language has been dealt with in the line of awards cited, agrees that the measure of discipline was just and asks that the erarnt employe be granted another chance not as a matter of right but as an example of human kindness by the employer. No such handling was ever given this case by the Organization.

The manner in which the majority reaches its conclusion is particularly unsavory. It quotes a portion of the General Chairman's letter dated May 27, 1964, addressed to the Carrier's Assistant Director of Labor Relations. The portion of the letter quoted, standing alone, might lead one to believe that the conclusion of the majority was justified. But that paragraph does not stand alone, it is followed by these words:

> "We do not agree with and reject the decision of General Manager Strench."

Thus we have an example of this Board's quoting out of context a portion of a letter to justify a statement precisely contrary to the letter as a whole.

The Organization's handling of this case from the beginning was based on its contention that the discipline of dismissal was too severe. The General Chairman, in his letter to General Manager Strench of March 27, 1964 (resulting in the decision referred to above) said:

> "It is our position that the discipline administered to claimant Carroll, continuing to hold him out of the service since January 24, 1964, for the offense he was charged with committing, when he was not on duty for the Carrier at the time, is entirely too severe in view of his excellent record over a period of 16 years and that he is entitled to be restored to the service as set forth."

The facts of this case, the position of the Employes and especially the language of Rule "G," which threatens dismissal only when intoxicants are used while an employe is on duty or under call to duty, all pointed directly to a sustaining award.

Instead, the majority indulged in the discredited device of quoting out of context a portion of a letter so as to justify an erroneous conclusion, and I dissent.

J. W. Whitehouse
Labor Member

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