

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6367) that:

(a) The Carrier violated the Agreement between the parties when on March 28, 1967, it dismissed Mail and Baggage Handler, Charles E. Smith from service after failure to afford a fair and impartial hearing and based on charges not substantially proven.

(b) The Carrier now be required to reinstate Mr. Charles E. Smith to service with seniority and all other rights unimpaired and to compensate him for all wage losses which he may hereafter suffer from the date he is released from his present physical handicap, by his personal physician, to return to his regular position as a mail handler.

OPINION OF BOARD: Claimant was employed as a Mail Handler, and on the date of the occurrence involved herein was assigned to the 3:30 P.M. to 12:00 Midnight shift in the sub-basement of the Union Station at Kansas City. His scheduled lunch period was from 7:00 P.M. to 7:30 P.M. The area in which Claimant had been working was wet and damp because of snow melting from mail wagons, and he had indicated to his Foreman that he desired to go to his car and secure dry socks and foot wear. At approximately 7:10 P.M., Claimant was found in an injured condition at the west end of the unloading platform at Tracks 28 and 29, apparently having slipped and fallen, resulting in a fracture of his left leg.

Carrier's Trainmaster reported that while on the scene he had detected the odor of intoxicants on Claimant's breath, and that the General Foreman, Assistant General Foreman and Foreman were also of such opinion. Thereafter, Claimant was charged with possible violation of Rule 7 of the General Rules for Guidance of Employees-1961, reading as follows:

"The use of intoxicants or narcotics by employees available for duty, or their possession or use while on duty, is prohibited."

Investigation was held, following which Claimant was found guilty and was dismissed from the service.

The burden of proving the Claimant was guilty as charged rested with Carrier. To meet the burden the transcript of hearing must contain substantial material and relevant evidence of probative value supporting Carrier's findings. Such evidence is lacking, and we find that Carrier has failed to prove the alleged violation of Rule 7. We have made no assessment of credibility in reaching this conclusion, but have considered Carrier's direct case in the best possible light and have found it wanting.

The claim for reinstatement to service with seniority and other rights unimpaired is sustained. Insofar as compensation for wage loss is concerned, Claimant is to be made whole for any such loss which is solely attributable to his wrongful discharge. The record contains nothing as to when Claimant could return to work following the personal injury. In the absence of such information, and in the absence of any rule in the Agreement leaving to Claimant's personal physician the determination as to when the Claimant is physically capable of returning to work, this Board cannot determine when Claimant was or will be released from the physical handicap suffered in the fall.

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 claim is sustained to the extent indicated in the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.