

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19590
Docket Number CL-19812

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (
(Fruit Growers Express Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-7183)
that:

1. 'The Company violated the Clerks' Agreement when on November 11, 1971, it dismissed Mr. David Boorman from service based on charges not substantially proven, and

2. Mr. David Boorman shall now be **reinstated** to the service of the Company with seniority and other rights unimpaired, and

3. Mr. David Boorman shall now be compensated for all wages lost plus 6% interest on such losses until reinstated, and

4. Mr. David Boorman's record shall **be** cleared of **all** alleged charges or allegations which may have been **recorded thereon** as a result of the alleged violations named herein.

OPINION OF BOARD: This is a dismissal case arising under Agreement between the parties, effective April 1, 1943, as revised and supplemented. Claimant, with seniority date of June 2, 1943, held the position of **Reliefman** when this case arose.

By letter dated October 24, 1971, the claimant was charged with (1) being under the influence of intoxicating beverages while on duty and (2) leaving the job without properly reporting off. Following hearing held on November 2, 1971, guilt **was** found on the first charge but not on the second; he was dismissed by letter dated November 11, 1971.

Mr. C. H. Port, Agent, Altoona, Pa., signed both the letter of charge and the letter of dismissal and, in addition, appeared as a witness in the hearing.

Petitioner urges that, because only one witness testified on charge 1, the evidence is inadequate to sustain the dismissal and, further, that the triple **roles** played by Agent Port deprived **claimant** of due process. Carrier contends the **evidence** was adequate **and** that the significance of the agent's role is not before the Board because it was not raised on the property.

We concur with Carrier on both points. The finding of guilt of being under the influence of intoxicating beverages was based upon the lay testimony of another employee, R. G. Gutshall, who had made direct observations of the claimant's behavior and speech at the time of the incident. Admittedly it is generally better procedure to have more than one witness on a charge so serious as the one here. However, the testimony of Carrier's single witness is reinforced by a damaging **inference** which can be logically and fairly drawn from the testimony of claimant himself.

Claimant's defense to the charge was that any unusual behavior in regard to his speech or his staggering was explained by the confusing effects caused by medication which had been prescribed by his doctor to relieve pain. and that in fact he had been in his doctor's office on the day of the incident. Thus claimant admitted he was under the influence of something. Medication was his explanation. He said he had a doctor's certificate to support his statement, but that he had lost it. So far as the record shows, **it** is still lost and thus gives rise to a damaging inference which the Carrier could have **considered** along with the other evidence.

We find no evidence of record to show that Petitioner's procedural point concerning Agent Port was **raised** on the property and, consequently, we shall not rule on this issue. We note, though, that Agent Port did not purport to give direct evidence as to claimant's condition on the date in question and, in addition, the record makes it clear that the dismissal action was in no way based upon the **Agent's** testimony.

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 **Number** 19590
Docket **Number** CL-19812

Page 3

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1973.