

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21333
Docket Number MW-21420

Nicholas H. Zumas, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (Louisville and Nashville Railroad Company

STATEMENT OF CLAIM: Claim of the **System Committee** of the Brotherhood that:

(1) The dismissal of **Machine** Operator **C. E. Ward** was without just **and** sufficient cause and **on** the basis of unproven charges (System File 1-5 (11)/D-105492 E-306-5).

(2) Machine operator **C. E. Ward** be reinstated with seniority, vacation and all other rights unimpaired and he be compensated for all wage loss suffered; all **in** accordance with Rule 27(f).

OPINION OF BOARD: A review of this record, including the transcript of hearing, reveals that there was substantive evidence of probative value that Claimant, on the date of the incident, violated Rule "G".

Even though Dr. Flowers (who examined Claimant) was not present at the hearing, the Roadmaster testified that Dr. Flowers told him **immediately** after the *examination* that the **only** thing **wrong** with Claimant was that he was in a "**stuporous** drunk." Contrary to the assertion of the Organization, such testimony was not hearsay and was properly considered by Carrier. Dr. Flowers' statement to the **Roadmaster** was confirmed by a medical report of the doctor's examination, and that letter was made part of the record.

While there was testimony by Claimant's co-workers that they did not smell alcohol on his breath and did not see him take a **drink, this** Board, as has been held many times before, has neither the capability or the mandate to weigh conflicting testimony. It is limited to a determination of whether there was substantive evidence of probative value to warrant Carrier's action.

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 Rmloyees involved in this dispute are respectively Carrier and Rmloyees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute **involved** herein; and

That the Agreement was **not** violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1976.

