

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21391
Docket Number MW-21640

Robert M. O'Brien, Referee

(Brotherhood of Maintenance of Way **Employees**)
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company
(Southern Region (and Rocking Division)

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

(1) The dismissal of Track Laborer B. H. Pendleton **constituted**, harsh, unjust, and excessive discipline.

(2) The Carrier shall reinstate Claimant Pendleton to his former position with seniority and all other rights **unimpaired** (System File **MG-1455/BofI 7/1/75**).

OPINION OF BOARD: Under date of June 9, 1975, Claimant, a track laborer, was charged with being absent without permission **from** the Tie Force at Marion, Ohio, Friday, May 30, 1975; with being under the influence of intoxicants while on Tie Force camp at Marion, Ohio, on Friday, May 30, 1975; and with conduct unbecoming a C & O **employee**. A hearing on the foregoing charges was held on July 1, 1975. Claimant was adjudged guilty of all three charges and dismissed from service with the Carrier.

At the hearing, Claimant admitted that he was scheduled to work on May 30, 1975 but failed to report. He offered no justification for his failure to report. This was an obvious violation of Rule 804 of Carrier's Book of Rules. Nor has Claimant denied that he was guilty of conduct **unbecoming** an **employee** on May 30, 1975. This too was a violation of Carrier's Book of Rules, i.e. Rule 801.

Claimant has denied, however, being under the influence of **intoxicants on May 30, 1975**. Yet a thorough **reading** of the facts adduced at Claimant's hearing compels this Board to conclude that he was indeed under the influence of intoxicants on May 30, 1975 as charged. Both Patrolman **Craesap** and Supervisor of Track **Schmuker** testified that Claimant was unsteady on his feet; that his eyes were glazed, that his speech was not **good**; and that an odor of alcohol emanated from him.

Based on the foregoing probative evidence, it is the considered opinion of this Board that Carrier has proven by substantial evidence that Claimant was, in fact, under the influence of intoxicants on May 30, 1975. Moreover, we further find that he was accorded a fair and impartial hearing as required by **Rule** 21 of the Schedule Agreement.

In the light of the foregoing serious violations this Board would generally agree with the Carrier that Claimant's dismissal from service was justified. Yet there is one circumstance present in the instant case that compels an opposite conclusion. And that is for the entire period of ~~time~~ that Claimant has been in Carrier's service - some 5 years and 7 months - there has been no discipline assessed against him. This clear discipline record for almost 6 years compels us to find that Claimant's dismissal from service was, in fact, excessive as alleged by the Employees. He should thus be restored to service with the Carrier but without any compensation for the time he has been held out of service.

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.

A W A R D

Claim sustained to the extent indicated in the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1977.

