

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21501
Docket Number CL-21705

Joseph A. Sickles, Referee

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

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
GL-8186, that:

(a) The Carrier violated provisions **of the** Clerks' General
Agreement and Supplements thereto when on September 11, 1973, they arbit-
rarily dismissed Clerk R. E. Gamble from service and,

(b) **That** the Carrier **now** be required to reinstate Clerk R. E.
Gamble to service with all rights possessed prior to dismissal being unim-
paired, and,

(c) That the **Carrier** **now** be required to compensate Clerk **R. E.**
Gamble for all wages lost while he is arbitrarily being held out of service.

OPINION OF BOARD: On August 28, 1973, **Claimant** was required to attend an
investigation based upon a charge that he was under
the influence of intoxicants while **on** duty.

Subsequent to a hearing, Claimant was dismissed from service.

Claimant asserts that he was scheduled to be at his work loca-
tion at midnight; but the record shows that he never reached the work site
because he had fallen asleep - at the YMCA - prior to reporting time.
Thus, according to Claimant, under **no** circumstances could he be intoxicated
while on duty. In any event, Claimant denies that he was intoxicated.

Claimant states that he was quite tired (and describes two **days**
of activity without proper rest) as being the reason that Carrier Officials
encountered difficulty in attempting to arouse him in the lobby of the **YMCA**.
However, the Carrier's witnesses based their conclusions of intoxication
upon an odor of alcohol **on** Claimant's breath, difficulty in arousing him,
his inability to comprehend the circumstances and slurred speech.

A. YMCA **employee** corroborated Claimant's testimony that he was
not intoxicated.

The record is not entirely clear as to whether presence at the
YMCA is tantamount to being "**on** duty" for this **employee** - however, **it** appears
that he went to sleep prior to his reporting **time**.

Without **immediate** regard for the **employe's** state of sobriety, it is obvious that he placed himself into a precarious position **when** he failed to provide himself with adequate rest prior to his **normal** reporting **time**, and under this record, that factor alone is sufficient to justify an imposition of disciplinary action.

Although long and unblemished service, in and of itself, may not be a basis to disregard a serious offense, we note that this **employe** has 18% years of service without disciplinary incident.

While a distinction between being intoxicated on duty and failure to report due to intoxication **may** be slight indeed, this record does **raise** certain questions as to the exact status at the **time** of the asserted incident.

Limited solely to this record, we will set aside the dismissal, **and** restore Claimant to service, but will not award back pay.

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 **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 discipline imposed was excessive.

A W A R D

The claim is sustained to the extent that the dismissal is set aside. Claimant shall be restored to service with retention of seniority and other rights, but without reimbursement for compensation lost during the period of the suspension.

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

ATTEST: A.W. Parks
Executive Secretary

Dated at Chicago, Illinois, this 15th **day** of April 1977.