

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22721
Docket Number CL-22582

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(**Express and Station Employees**
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAM: Claim of the System Committee of the Brotherhood
(CL-8570) that:

(1) Carrier violated the Agreement between the parties when,
on the date of March 18, 1977, Mr. **R. L. Harris** was unjustly dismissed
from the service of Carrier, and

(2) Carrier shall, by reason of the violation aforementioned,
be required to restore Mr. **R. L. Harris** to Carrier's service and
compensate him for all wages lost, commencing February 26, 1977.

OPINION OF BOARD: The Claimant was notified of an investigation
concerning a charge of possession and use of
alcoholic beverage while on duty and on Company property, as well as
allowing unauthorized individuals to ride in a Company vehicle.

Subsequent to the investigation, the employe was dismissed
from the Carrier's service.

The employe acknowledged that he had consumed "several
bottles of beer" prior to his dinner "**some** 6 hours before going on
duty" on the day in question, but he denies that said indulgence
interfered with his performance of assigned duties, Although he
concedes that a **non-employe** was riding in a Company vehicle, he
states that said individual was the wife of a fellow employe who was
experiencing automobile problems, and he was merely rendering
assistance.

The Claimant **made certain assertions concerning** rendering
vehicular assistance at a nearby restaurant and the chronology of
events which resulted in beer being transported in the Company vehicle.

The Carrier, however, assessed the evidence of record in a manner differently than the **employee** and concluded that disciplinary action was appropriate.

For instance, the Trainmaster observed certain activities which formed the basis for his conclusion that the Claimant and an off-duty clerk possessed beer on the premises while the Claimant **was** on duty. In addition to testimony concerning the "dropping" of a can and the discwery of an empty beer can in the immediate vicinity, reference was made to the fact that a brown paper bag was found in the front seat of the vehicle, which contained 4 unopened cans of beer.

When the **Trainmaster** smelled Claimant's breath, the **Trainmaster** detected an odor of alcohol, which prompted him to request the Claimant to submit to a blood test. The blood test was administered at a nearby hospital, and it showed that the Claimant's blood contained **.046** Ethanol.

The Claimant indicated that his consumption of beer took place at approximately 6:00 p.m. The blood test was administered at approximately **2:15** a.m. - some 8 hours later - and at the time showed the amount noted above.

Once again, this Board is asked to review conflicting evidence and determine that the Claimant's version of a disputed factual circumstance be **accepted** and that the Carrier's version be rejected. We have noted in numerous Awards that this Board is not constituted to make such determinations.

Issues of credibility **must** be determined by those who received the evidence and testimony, and we would have no basis for substituting our judgment in that regard. Obviously, if a record is devoid **of** any reasonable basis for a factual conclusion, then it is incumbent upon us to correct that impropriety. But, such is not the case here.

It cannot be argued that the evidence of record is incapable of supporting the Carrier's conclusions. The blood test which was voluntarily agreed to showed a fairly significant level of alcohol in the bloodstream, some eight and one-half hours after the **employee** states that he had consumed certain alcoholic beverages. In fact, the level of alcohol in the bloodstream was quite close to that level

which is considered to be a **prima facie** showing of "impairment" in many states. Thus, it was not unreasonable for the Carrier to conclude that the **employee** had consumed alcoholic beverage on Company property. Further, it was not unreasonable to presume that he shared in the culpability of possessing alcoholic beverage while on duty.

Under all of the circumstances, we find no basis for disturbing the findings and the discipline imposed.

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 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.