

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23080  
Docket Number CL-23155

Paul C. Carter, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8889) that:

(a) The Carrier violated the Clerks' Agreement when they dismissed Clerk Kerry D. Mercier from service on September 22, 1976.

(b) Claimant Mercier now be restored to full service with the Carrier with all rights unimpaired, and

(c) Claimant Mercier be compensated for all wages lost as a result of the Carrier withholding him from service beginning September 3, 1976, to date.

OPINION OF BOARD: According to the record, claimant had an employment date with the Carrier of October 13, 1972, and had established seniority on the Detroit District Transportation Clerks' roster on October 14, 1974.

On September 3, 1976, claimant was assigned as operator at Plymouth, Michigan, with assigned hours 12:00 Midnight to 8:00 A.M. On that date he was notified to attend investigation at 10:30 A.M., Monday, September 13, 1976, on the charge:

"You are charged with responsibility in connection with not being physically fit to perform service, specifically the Violation of Rule G at or about 1:40 a.m. on September 3, 1976, while working the position of T-30, scheduled to work 12:00 midnight to 8:00 a.m. at Plymouth, Michigan.

Arrange for representation and/or witnesses, if so desired."

The investigation was conducted at the time scheduled. A copy of the transcript has been made a part of the record. The Board has carefully reviewed the transcript and finds that none of claimant's substantive procedural rights was violated. Claimant was present throughout the investigation and was represented. On September 22, 1976, claimant was notified of his dismissal from service.

Carrier's Rule "G" provides:

"The use of intoxicants, narcotics or dangerous drugs by employees subject to duty, while on duty or on Company property is prohibited. Possession of intoxicants, narcotics or dangerous drugs or **participation** in any transaction involving same by employees while on duty **or** on Company property is prohibited.

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"The **use** of any medication, including those prescribed or dispensed by person or persons authorized to do so, that will adversely affect the employee's alertness, coordination, reaction, judgment, vision or gait when subject to duty or on duty is prohibited."

In the investigation substantial evidence was adduced in support of the charge against claimant. Two Carrier officers, a Road Foreman of Engines and an Acting Assistant **Trainmaster**, as well as a Patrolman, testified that they observed claimant after he reported for duty and considered him to be under the influence of intoxicants. The claimant admitted having consumed three beers about 8:00 P.M.

**Based** upon the entire record, the **Board** concludes that severe discipline was warranted; however, permanent dismissal was excessive. The time **that** claimant has been out of service should constitute sufficient discipline. We will award that claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while 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** permanent dismissal was excessive.

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Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.