

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23347  
Docket Number CL-23370

Paul C. Carter, Referee

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

PARTIES TO DISPUTE:

[Chicago, Milwaukee, St. Paul and **Pacific Railroad Company**

STATEMENT OF cum: Claim of the **Committee** of the Brotherhood  
(**GL-8984**) that:

1. Carrier violated the Clerks' Rules Agreement et Chicago, Illinois when it charged employe D. Neilsen, held an investigation, **and** dismissed him without proving the alleged charges.

2. **Carrier** shall now be required to reinstate employe **D. Neilsen**, clear his records of the alleged **charges** and compensate **him for all lost time commencing** February 2, 1979 and continuing until his return to service.

3. Carrier shall further be required to pay premiums for the claimant's health **and** welfare, life insurance **and** dental plan coverage which it would have made had it not unjustly dismissed him from service.

4. **Carrier** shall further be required to pay interest at the rate of seven and one-half ( $7\frac{1}{2}$ ) percent per annum, **compounded** annually on the **anniversary** date of this claim, based on the amount due in Item 2 above.

OPINION OF BOARD: **Claimant was** the regularly assigned occupant of Assistant Console Operator Position No. **23160**, with assigned **hours 3:30 P.M. to 12:00** Midnight, **Monday** through Friday. On February 2, 1979, he was notified of formal investigation to be held on February **7, 1979:**

"...for the purpose of developing all facts ~~and~~ circumstances in connection with:

- 1) Allegedly being absent from your assignment without proper authority on January 31, 1979 from approximately **5:15 p.m. to 6:15 p.m.**
- 2) Alleged consumption of alcoholic beverages during your assigned hours on January **31, 1979.**

- "3) Allegedly hating walked off your assignment without proper authority, thereby not protecting your assignment on January 31, 1979, **from approximately 8:10 p.m.** until the expiration time of your position.
- 4) Allegedly failing to perform the assigned duties of your position on January 31, 1979 from approximately **5:15 p.m.** to **6:15 p.m.** and **8:10 p.m.** until the expiration time of your position.

You may be **represented** es provided for **in** your schedule rules and agreements.

Mr. J. C. **Manders has** been authorized by me to conduct the investigation."

**The** investigation was **conducted** as scheduled end on February 15, 1979, claimant was notified of his dismissal **from** service. The claim was handled in the usual manner on the property, and failing of settlement, **was** referred to this **Board.**

A copy of the transcript of the investigation conducted on February 7, 1979, has been made a part of the record. A careful review of the transcript shows that none of claimant's substantive procedural rights **was violated.** Claimant was present **throughout the** investigation end was represented.

**There was** substantial evidence adduced et the investigation in support of the charges against the claimant. **The** claimant admitted consuming alcoholic beverages in the Falcon Lounge during his assigned working hours. There was also substantial evidence in support of the balance of the charges. It is well settled that disciplinary **proceedings** are not criminal proceedings and that strict rules of evidence do not **apply.**

There is no proper basis for the Board to interfere with 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, es approved June 21, 1934;

~~That~~ this Division of the Adjustment ~~Board~~ has jurisdiction over the dispute involved herein; end

~~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 et ~~Chicago, Illinois,~~ this 14th ~~day~~ Of August 1981.