

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24197
Docket Number CL-24034

John B. LaRocco, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9398) that:

(1) Carrier violated the rules of the effective Clerk-Telegrapher Agreement when, on March 31, 1980, it unjustly dismissed Utility Clerk J. P. Powers from service of the Carrier, and

(2) As a result of such impropriety, Carrier shall be required to reinstate Mr. J. P. Powers to his former position and compensate him for all wages lost, commencing March 15, 1980, and continuing until reinstated.

OPINION OF BOARD: [Claimant, a utility clerk, was dismissed from service for reporting to work under the influence of alcohol on March 15, 1980.] When Claimant reported to work a few minutes late on March 15, 1980, the Assistant Agent - Terminal Services detected the odor of alcohol on Claimant's breath. The Assistant Agent then asked the Trainmaster and Assistant Manager to smell Claimant's breath as he exhaled. The two Carrier officials testified at the March 27, 1980 investigation that they clearly perceived an alcoholic odor on Claimant's breath. Several of Claimant's fellow workers testified that Claimant acted normally and that they did not smell any alcoholic odor when speaking with Claimant on the morning of March 15. Claimant stated that though he had consumed alcoholic beverages the evening before, he denied he was under the influence of any intoxicant by the time he reported for duty.

The Organization urges us to summarily sustain this claim because the investigation was ostensibly held beyond the ten day limitation period set forth in Rule 47(a-1) of the applicable Agreement. We need not determine whether or not the investigation was timely held since the Organization failed to make any timeliness objection at the hearing.

Turning to the merits, we find sufficient evidence in the record to demonstrate that Claimant reported to work on March 15, 1980 under the influence of alcohol. Three Carrier officials were absolutely certain that they detected the odor of alcohol on Claimant's breath. The hearing officer could reasonably decide to attach greater weight to the testimony of the three Carrier officials than to the statements of Claimant's fellow workers.

This Board recognizes that Claimant committed a serious offense. However, because Claimant's prior discipline record contains only one minor blemish and due to Claimant's length of service, the penalty in this case was excessive and unduly harsh. Claimant shall be reinstated with his seniority unimpaired but without compensation for time lost.

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 Employee involved in this dispute are respectively Carrier and Employee 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 was excessive.

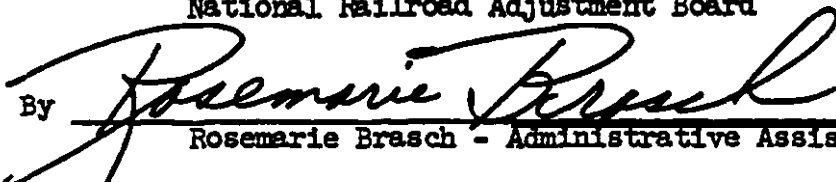
A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.

