

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24308**
Docket Number **a-24160**

Edward L. **Sumtrup**, Referee

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

STATEMENT OF CLAIM: claim of the System Committee of the Brotherhood (GL-9443)
that:

(1) Carrier violated Rules of the effective Clerk-Telegrapher Agreement when, on June 1, **1980**, it unjustly dismissed Operator W. L. Burley from service of the Carrier, end

(2) As a result of such impropriety, Carrier shall be required to reinstate **Mr. W. L. Burley** to his **former** position and **compensate** him for all wages lost **commencing** June **1, 1980**, and continuing until reinstated."

OPINION OF BOARD: Claimant, **Mr. W. L. Burley**, has been employed by the Carrier approximately **7** years. At the **time** of the incident he held regular **assignment** es **an** Operator at "**JD**" Tower, Hysttsville, Maryland; **3:00** to **11:00** P.M. shift. **Under** date of May **12, 1980** Claimant **was notified** to attend an investigation on May **16, 1980**. **Claimant** was charged with "being under the influence of **intoxicants** at or about **7:00** P.M. on **May 11, 1980** while on duty..." **On June 1, 1980 Claimant** wee notified that he **had** been found guilty as charged and was dismissed **from** service. After appeal on property by the Organization up to and **including** the highest designated officer, this case is now before the National **Railroad** Adjustment Board.

Organization's **claim**, on **procedural** grounds, is **that** current Agreement Rule **47** **was** violated because Division Manager J. **M. Emmett**, who was the first **in** line to receive **Claimant's** appeal on the property, was also the one who approved the original dismissal decision. In denying this claim this Board notes that due process procedures as required by the Rule cited above were, nevertheless, available through the subsequent **appeal** to the Director of Labor Relations who had authority to overturn the decisions **of** both Division Manager **Emmett** and the hearing officer, Assistant Superintendent W. R. **McTheny**.

On merits, a review of the hearing **transcript** **shows** sufficient substantial evidence present to **warrant** the **conclusion** that **Claimant** is guilty as charged. Substantial evidence **is** here defined, in the words of the Supreme Court, as "such relevant evidence **as a** reasonable mind might accept as adequate to **support** a conclusion" (**Consol. Ed. Co. v. Labor Board 305 U.S. 197, 229**). The **testimony** of General Road Foreman of Engineers Kirk established that Claimant was in **an** intoxicated state on **May 11. 1980**. Claimant was described **as** having slurred speech, **an** unsteady gate, the odor of alcohol on his breath, and an apparent inability to clearly recognize Mc. Kirk by correct title. This **testimony** was corroborated in hearing by Road Patrolman C. Kaiser, Jr. Organization's

contention is that a combination of medicines ingested by the Claimant because of a heart ailment, plus a codeine based cough syrup which was 45% alcohol at 90 proof, which produced an apparent "synergism effect", was sufficient grounds to exempt Claimant from the charge levied against him. This Board does not agree. If, in fact, Claimant was unable to work on the day in question, or if he knew that he would have to take medicines which would incapacitate him, it was his responsibility to have notified the Carrier to that effect under Rule 22 of the current Agreement. By not doing so Claimant created an unsafe work environment and a safety hazard for his fellow employees and for himself. No railroad can reasonably operate under such conditions. This Board will not, therefore, disturb Carrier's determination in this matter.

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.

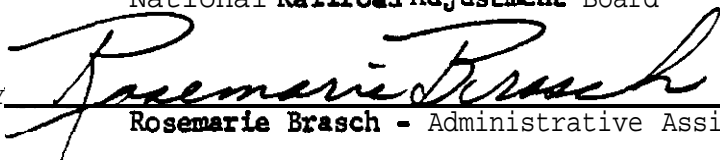
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

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

