

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24843
Docket Number CL-24664

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9605)
that:

(1) Carrier unjustly dismissed from the service Mr. J. J. Ambroso, Extra Board Clerk, Battle Creek, Michigan, as a result of investigation held on March 9, 1981, in which the transcript failed to support the decision of the Carrier in the discharge of Mr. Ambroso in the caption of the investigation.

(2) The Carrier shall now be required to reinstate Mr. Ambroso with all rights unimpaired with compensation for any wage losses incurred from January 25, 1981.

OPINION OF BOARD: Claimant J. J. Ambroso has a seniority date of March 11, 1971, and was regularly assigned to the extra board at Battle Creek, Michigan. On February 25, 1981, Claimant was called to fill a 7:00 A.M. shipper/receiver position. He reported to work over one hour late. At approximately 9:40 A.M., Claimant's foreman found him asleep. This was reported to the General Materials Supervisor who went to the Shipper/Receiver office and, also, found Claimant asleep. In turn, two additional management representatives arrived in the Shipper/Receiver office and noted Claimant's condition. After Claimant awakened, he was asked what he was doing. As a result of his replies and the observations of the management representatives, Claimant was removed from service pending investigation. That investigation resulted in a finding Claimant was under the influence of a substance which adversely affected his ability to work. The penalty of discharge was imposed.

The Organization protests the Carrier's action and argues the hearing transcript demonstrates sharp conflicts of testimony as to whether or not Claimant was under the influence of an intoxicant. According to the Organization, the only proven circumstance was the Claimant was sleeping on duty. The Organization argues such a minor offense does not require the harsh and excessive penalty herein imposed.

True, the record discloses some inconsistency of testimony. However, the Claimant admitted he was asleep. Two witnesses testified they smelled alcohol on Claimant's breath. It is uncontested Claimant slept through attempts to awaken him and that loud exchanges took place which did not interrupt his sleeping. As to what awakened him, Claimant testified, "I just came to." The testimony of three witnesses indicated Claimant's speech was slurred and incoherent. In terms of an explanation, Claimant offered nothing relevant for his conduct of February 25, 1981. Having placed himself in such compromising circumstances, this Board finds no probative basis for disturbing Carrier's conclusion that Claimant was under the influence of a substance which adversely affected his ability to work. The record shows Carrier took Claimant's prior record into consideration in reaching its decision to terminate employment. In the absence of any showing the Carrier abused its discretionary powers, we uphold the action taken.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

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:


Nancy J. Devereaux Executive Secretary

Dated at Chicago, Illinois, this 8th day of June, 1984