

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25446
Docket Number CL-24024

Herbert Fishgold, Referee

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

PARTIES TO DISPUTE: (

(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9394**) that:

(1) Carrier violated the Agreement between the Parties when it erroneously determined that Yard Clerk P. A. Walker used intoxicants on June 27, 1979, and it suspended him from service for sixty (**60**) days, and,

(2) Carrier, because of such wrongful action, shall reverse the decision rendered assessing discipline, exonerate Mr. Walker of involved charges and compensate him in accordance with the provisions of Rule 47 of the Agreement during the sixty (**60**) days suspended, commencing June 27, 1979.

OPINION OF BOARD: Mr. P. A. Walker, Yard Clerk, **Glenwood** Yard, Pittsburgh, Pennsylvania, scheduled duty hours of 3:00 p.m. to 11:00 p.m., June 27, 1979, was relieved from duty and held from service at 7:00 p.m. that date by Chief Yard Clerk J. A. **Morganstern**, **Glenwood** Yard, under instructions given to him by Yardmaster D. **Bendick**, **Glenwood** Yard, by reason of Mr. Walker's alleged use of intoxicants at Roth's Tavern, located approximately 1000 feet from **Glenwood** Yard Office.

Walker, who was employed by the Carrier in 1969, was served with a notice of hearing involving the following charge:

"You are charged with the use of intoxicants at Roth's Tavern, 74 Vespuccius Street, Pittsburgh, PA 15207, at or about **6:30** p.m. on June 27, 1979."

Following an investigative hearing, Claimant was given a 60-day suspension.

The record of the hearing presents a conflict in testimony. Claimant states that he was in the Tavern "to buy lunch in anticipation of possible additional time after (**his**) regular tour of duty". He acknowledges that he had been in the Tavern sitting at the bar for approximately ten (**10**) minutes, but denies having a drink, even though there may have been a beer in front of him. Although Claimant maintains that he had ordered a sandwich in advance of arriving at the Tavern, there was no evidence of any food in front of him, nor did he proffer this explanation at the time. Both **Morganstern** and **Bendick** testified that they saw a glass of beer and bottle of Rolling Rock in front of Claimant, and that no one else was sitting next to him. They also acknowledged that they did not observe Claimant purchase a drink or actually drink anything, nor did he appear to be intoxicated.

It is unfortunate that neither Morganstern nor **Bendick** asked Claimant what he was doing in the bar or whose beer was in front of him. **However**, as this Board noted in Award No. 19928:

"...(It) is not our function to determine the credibility of witnesses nor weigh the evidence, when there is valid and sufficient evidence, even though denied, to support Carrier's decision. We have reiterated this principal (**sic**) in many Awards....

With their responsibility to the public, railroads have generally quite properly considered the use of intoxicants to be an extremely serious offense. Indeed, this Board has found dismissal is appropriate under the rules for this infraction. Accordingly, we do not find that the imposition of a **60-** day suspension in this case was either arbitrary or capricious. We will not substitute our judgment for the disciplinary action taken by the Carrier and the claim must be denied.

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.


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.