

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE DENVER AND RIO GRANDE WESTERN RAILROAD CO.

Wilson McCarthy and Henry Swan, Trustees

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

- (1) That Mr. Walter Rawlins, Secretary to Assistant Superintendent at Burnham, be reinstated with full seniority rights intact.
- (2) That he be reimbursed for all time lost.

OPINION OF BOARD: This discipline case involves employe Walter Rawlins, in service about 2½ years and who has been Secretary to the Assistant Superintendent. He also served as Secretary of the Safety Committee. He was dismissed from service because of his conduct, while riding on one of Carrier's trains on a pass, during his vacation. His dismissal was based upon the fact that while riding on such train he was intoxicated, used profane language to the disturbance and annoyance of passengers, and became involved in an altercation with two intoxicated Indians riding on the same train. Employe and the Indians were finally ejected from the train and lodged in a jail at Canon City, Colorado. Employe was later released in the custody of his father.

Carrier invokes Operating Rules "G" and "K" of the Rules and Regulations of the Operating Department in support of its discipline. These rules prohibit the use of intoxicants, and boisterous, profane, and vulgar language. Carrier insists that a reasonable interpretation of these rules requires that they be obeyed by employe while on the property of Carrier whether such employe is at work or on leave or vacation.

Organization asserts that the record does not substantiate the conclusion of any improper conduct on Employe's part and that in any event Carrier had no authority to discipline him because he was off duty and riding on Carrier's train on a pass during his vacation.

The testimony brought out at the hearing amply sustains the conclusion that Rawlins was intoxicated and disorderly on Carrier's train and interfered with the orderly and efficient operation of train. Several employes testified that he was intoxicated, boisterous and used profane language and that complaints were made by passengers as to his conduct. Our function is complete when we examine the record and find there is sufficient evidence to support the action of the Carrier. Award 2991.

But, Organization asserts, employe here was on vacation, and this was his private affair and no concern of the railroad. We are unable to agree. What an

employee does on vacation or while on leave, when he is off the property of the carrier ordinarily does not justify discipline so long as his conduct does not interfere with his work. See Award 2991; also 273, Fourth Division; 260 and 262, Second Division.

However, an entirely different situation is involved when an employee is on carrier's property riding on one of carrier's trains and is guilty of the type of conduct herein disclosed. In such a case it is but a fair and reasonable interpretation of the operating rules to say that he is subject to discipline if he becomes guilty of conduct in violation of these rules, which conduct is harmful and detrimental to the railroad and interferes with the orderly and efficient operation of the trains. So long as an employee continues in service and retains the status of employee it is an assurance on his part of a willingness to obey the operating rules while on carrier's property, and to refrain from doing anything in violation of the rules which interferes with carrier's business and the orderly operation of its trains. Awards cited in behalf of Organization, such as 261, 262, Second Division; 273, Fourth Division and 2991, Third Division are not in point on the facts here because they all involve conduct of an employee off the carrier's property. However, there are some statements in these awards which support the conclusion herein reached. For example in Awards 261 and 262, Second Division, it is stated:

"That the Carrier would have the right to lay down rules governing drinking or intoxication, while in service or on company's property or in such place or manner as would have a direct effect on the carrier's business, there can be no doubt." (Emphasis supplied.)

Again in Award 2991, Third Division, it was said:

"We are in accord with the pronouncement which has been made time and again to the effect that the carrier has the right to prohibit the use of intoxicants in or around its property; that it has the right to insist that its employees do not report for duty while under the influence of liquor; that it has the right to protect its business from the effect of drinking." (Emphasis supplied.)

Referee has found no award nor has any been cited which holds that discipline is not proper under such circumstances as are involved in the instant case.

We are not here laying down a rule which will give carrier the right to control the conduct of an employee in his private life and cause him to feel constantly insecure in the possible loss of his job and seniority and other rights pertaining to his job. We are here simply suggesting that when an employee is on carrier's property riding on one of its trains and is guilty of such conduct as is here involved which interferes with the orderly and efficient operation thereof that he should be subject to discipline even though he is on vacation at the time.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in his 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 21st day of December, 1945.