

**Award No. 8993**

**Docket No. CL-11067**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Roscoe G. Hornbeck, Referee**

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**PARTIES TO DISPUTE:**

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

**SOUTHERN RAILWAY COMPANY**

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

(a) The Carrier violated the Agreement between the parties when it discharged Mr. George A. Tippen from its service effective Monday, June 9, 1958, without due process, in an arbitrary and capricious manner and on charges unproved, and

(b) Claimant, Mr. George A. Tippen, shall now be restored to Carrier's service with seniority, vacation, and all other rights unimpaired and compensated for all loss sustained in accordance with Rule 40 (a).

**OPINION OF BOARD:** The claims on behalf of Mr. George A. Tippen and his wife, Lucy G. Tippen, Clerks in the office of Auditor of Passenger Accounts of the Carrier, are set up under separate Docket numbers, but their hearings were conducted as one and at the same time. It will, therefore, be necessary to consider the facts developed as they relate to both of the Tippens although the award on this submission relates to Mr. Tippen only and the conclusions reached will refer especially to the claim made in his behalf.

The charge against Mr. and Mrs. Tippen was that they, on the 6th of June, 1958, while passengers on Train 34 of the Carrier railroad, enroute to New York, riding on company passes, had been drinking, were involved in a fight causing a general disturbance and interfering with the orderly conduction of the company's passenger business.

On the issue as to the charge against Mr. Tippen, there is one particular only at variance in the material facts developed and no doubt as to the conclusions which must be drawn from these facts.

The Tippens, over their signatures and at the investigation hearing, admit that they had been drinking on the train on which they were riding. Mrs.

Tippen says that the condition which many of the witnesses characterized as intoxication was caused by an injury which she suffered from an assault upon her by her husband. Independent of their statements the evidence is overwhelming that both were intoxicated. Nine witnesses by written statement or oral testimony express opinions that both were intoxicated. They described the condition variously as intoxicated, highly intoxicated, under the influence and dazed. There is no variance in this proof on the ultimate fact as to the intoxication of the Tippens.

The first appeal of the Organization was based upon the premise and it is now urged that the opinion evidence as to the intoxication of the Tippens was not admissible, not properly received and not probative of the issue, because no doctor was called and no scientific test was made to determine if the Tippens were drunk.

It is the universal practice of courts and of the several Divisions of this Board to accept the opinions of laymen who are qualified by experience to pass judgment whether or not an individual is intoxicated. Such testimony, of course, is but an opinion from which the trier of the facts must make the ultimate determination on the issue.

Independent of the opinion evidence which came from officers of the Carrier and police officers, especially well qualified by years of experience to speak on the matter at hand, the proof supports their opinions.

Mr. Tippen says that he had but two drinks of whiskey and Mrs. Tippen states that she had but two drinks of whiskey which did not include the beer which one or both of them consumed. The dining room Steward testified that he provided, in all, to each of them five or six bottles of beer. It is also shown that an empty pint whiskey bottle was found under the window and on the floor of the Bed Room which was occupied by the Tippens. So that, it is inferable, at least, that one or both of the Tippens drank a pint of whiskey of their own, each a drink of whiskey with a passenger from California and ten or twelve bottles of beer from the time they entrained at Atlanta, Georgia at about 9:00 A. M. until they left the train at Greensboro, North Carolina at about 7:00 P. M. the same day.

According to the testimony Mr. Tippen became nasty in his attitude generally. One witness says that after he had left the train he cursed and used profane language. He was quarrelsome, turned a perfectly innocent conversation between a Dining Room Steward and Mrs. Tippen into a charge of improper conduct between them and after the Tippens had left the train, in the presence of a police officer, followed the former statement with a vulgar accusation against Mrs. Tippen of an act of infidelity.

Upon the whole, it is charitable to account for Mr. Tippen's conduct only upon the conclusion that he was acting under the influence of too much alcohol.

It was developed that a short time before the Tippens were caused to leave the train at Greensboro, North Carolina, some difficulty arose in their Bed Room. As a result Mrs. Tippen was heard to be screaming, "He's killing me, get him out of here." A Porter standing near by attracted by the commotion pointed to the Conductor the room from which the disturbance was coming. The door was opened on request and Mrs. Tippen said, in the presence of three persons, "You hit me, get him out of here. He tried to

kill me." Mrs. Tippen suffered a cut in her left cheek under the eye causing her to bleed profusely, the blood covering much of her dress.

It is urged that there is no proof that the occurrence which was developed interfered with the conduct of the Carrier's business, as charged. The foregoing recitation of facts discloses that the natural and probable effect of them would be to disturb and cause concern to other passengers in the same car with the Tippens. But, in addition to the circumstances heretofore mentioned, there is direct evidence of the disturbance of the passengers. Harry Kent, the Conductor of the Pullman Sleeping Car, stated in his report to his company, offered as an exhibit, "Neither one wanted to leave the train but they had caused so much trouble had had all the passengers on edge."

It is asserted that the statement of the Pullman Conductor should not have been admitted because it did not bear the actual signature of Mr. Kent. But it was accepted at the hearing without objection and it is now too late to raise the question of its admissibility.

The occurrence in the Bed Room was of such gravity and the injury to Mrs. Tippen considered so severe as to cause the Conductor of the train to request the Tippens to leave at Greensboro, North Carolina. The Tippens demurred to this, whereupon the Conductor reported with recommendation to an officer of the company who in turn called the Police Department of Greensboro and they boarded the train and finally prevailed on the Tippens to leave the train and they did so and spent the night in a hotel in the city.

Some claim is made that "due process" was not accorded to the Tippens because the officer of the Carrier, J. H. Scott, Auditor of Passenger Accounts, who presided at the investigation was the officer who suspended the Tippens when they reported for work on Monday following their return from Greensboro. Also because opening remarks of Mr. Scott indicated that he had prejudged the charges and therefore was disqualified to impartially pass upon them. There is some suggestion in the record to support this last claim but the time to have objected to Mr. Scott proceeding with the investigation was at the beginning thereof, or at the latest, when he made his preliminary statement. However, it must be said that there is no indication in the record that Mr. Scott did not accord the Tippens a fair hearing, which both admitted, or that he did not weigh and decide the issue upon the evidence.

Objection is made to the reception of the written statements of a number of the witnesses. This was not objectionable especially as all but two of the witnesses were present and subject to cross examination.

Finally it is urged in the brief of the System Committee that the finding against and discharge of Mr. Tippen was not justified because the drinking was off duty and off the property of the Carrier. Award 8431, this Division is cited. The Tippens were not on duty but to all intents and purposes the incidents involved occurred on the property of the Carrier. We are not ready to hold that a serious offense of an employe, although committed while off duty and off the property of his employer, may not be a proper basis of a charge which, if proven, will support his dismissal. The offenses charged and proven against Mr. Tippen well supported the finding against him and his discharge from his employment.

**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 Employes involved in this dispute are respectively Carrier and Employes 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: F. P. Morse  
Acting Secretary

Dated at Chicago, Illinois, this 29th day of September, 1959.