

Award No. 10566

Docket No. CL-12764

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that (GL-5033):

(1) The Carrier violated rules of the Clerks' Agreement of December 1, 1956 when it arbitrarily dismissed Yard Clerk Ben J. Morgan, Macon, Georgia, from its service following investigation held on March 15, 1961, and that, therefore,

(2) Clerk Ben J. Morgan shall now be restored to his position of Relief Clerk No. 2, with seniority and all other rights unimpaired and compensated for all wage loss sustained retroactive to March 17, 1961, for each work day thereafter until the violation is corrected.

OPINION OF BOARD: This is a discipline case. Claimant was arrested by city police officers at about 6:25 P. M., March 1, 1961, and charged with driving an automobile while under the influence of intoxicants. He remained in jail from about 6:35 P. M. until 10:35 P. M., March 1, at which time he was released on bond. On March 8, 1961, he was tried in Recorder's Court and found guilty as charged, fined \$300.00 or 60 days in the City Stockade, and his driver's license suspended for a period of six months.

On March 10, 1961, the following charges were preferred against the Claimant by the Carrier's Superintendent:

"An investigation will be held in the Trainmaster's Office, Room 216, Terminal Station, Macon, Georgia, at 10:00 A. M., Wednesday, March 15, 1961.

"In this investigation you will be charged with violating Rules 701 and 702 of the Operating and Maintenance Rules, effective September 1, 1958, in connection with your arrest by City Police officers on March 1, 1961 on a charge of driving an automobile while

under the influence of intoxicants, and being found guilty in Recorders Court, Wednesday, March 8, 1961, and fined \$300.00 or sixty days in the City Stockade.

"In this investigation your past record will be entered into the records of this investigation.

"Arrange to attend this investigation, bringing witnesses and representatives in accordance with your Agreement."

The investigation was conducted by the Trainmaster as scheduled; the Claimant was present at the investigation, together with two representatives.

At the outset of the investigation the Claimant's representative objected to the charge on the ground that it was not "precise" within the requirements of Rule 20 of the Agreement. The Board finds that the charge was specific enough to put Claimant on notice as to the matters to be inquired into at the investigation.

At the investigation the Claimant admitted having been arrested on charge of driving while under the influence of intoxicants on March 1, 1961; having been found guilty of the charge and fined \$300.00, and having had his driver's license suspended for a period of six months.

The transcript of the investigation also shows numerous prior instances of Claimant having been convicted for similar offenses.

Following the investigation the Claimant was notified on March 17, 1961, of his dismissal from the service. Subsequently, the Organization requested his reinstatement on a leniency basis. Upon denial of that request, claim was later made for reinstatement with pay for time lost. The Carrier contends that the latter claim was not properly filed in accordance with the requirements of the Agreement. The Board finds it unnecessary to pass upon this point in view of its decision on the merits of the dispute.

The record before the Board shows that Claimant was previously dismissed from the service of the Carrier in February, 1956. He was later reinstated to the service strictly on a leniency basis, and with the understanding that he would be on probation.

Based upon the entire record, it cannot be said that the action of the Carrier was arbitrary, capricious, or in bad faith.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1962.