

Award No. 10789

Docket No. CL-12611

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

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 (GL-4976) that:

(a) The Carrier violated the Agreement when, effective August 13, 1960, Mr. John F. Peacher, Yard Clerk, Brooklyn Yard Office, Brooklyn, Illinois, was dismissed from the service of the Southern Railway Company, charged with being intoxicated while on duty and conduct unbecoming an employe, and failure to properly perform the duties of his position at about 1:30 P. M., Friday, July 29, 1960.

(b) Claimant John F. Peacher shall now be returned to the Carrier's service with seniority and all other rights unimpaired.

OPINION OF BOARD: This is a discipline case. Claimant, John F. Peacher, was a yard clerk in Carrier's yard office at Brooklyn, Illinois. On August 13, 1960 he was dismissed from Carrier's service for being intoxicated while on duty, conduct unbecoming an employe, and failure to properly perform his duties at about 1:30 P. M. on Friday, July 29, 1960. The evidence produced at the Investigation on August 5, 1960 clearly shows that Claimant was guilty of violating Rule G of the Carrier's Operating Rules prohibiting the use of intoxicants. Claimant himself admitted that he took a drink before he came to work and about noon left the Company property, went to a saloon and got another drink and that he could feel the effect of the drinks. The Employee Representative acknowledged at the investigation that Claimant was guilty of the charges but requested that the Carrier be as lenient as possible with Claimant because of his long service and good record as an employe. No contention is made that the Carrier failed to afford Claimant a fair and impartial investigation in accordance with Rule 40 of the Agreement.

In its Submission the Organization alleged that Carrier's action violated the Agreement and it argued that the penalty assessed was excessive and too severe in view of Claimant's long record of satisfactory service. However, the record clearly shows that during the handling of the case on the property the Organization never at any time asserted that the Carrier had violated the Agreement. It is a well established rule that this Board will not consider contentions or charges which were not made during the handling of the case on

the property. Award 5469 (Carter). Hence the contention concerning the violation of the Agreement must be rejected.

The record reveals that in the handling of the case on the property it was treated by the Organization strictly as a request for leniency. This is clear from the statement of the Employee Representative at the hearing requesting that the Carrier be as lenient as possible, and from the letters of the Local and General Chairman in the appeals in which they merely requested that Claimant be given a second chance. Furthermore, the claim asked only for reinstatement with rights unimpaired and made no monetary demand. This in itself is essentially a plea for leniency. It is well recognized that reinstatement on a leniency basis is solely within the discretion of the Carrier and not a proper function of this Board. Award 8478 (Coburn); Award 8675 (Vokoun); Award 9775 (Larkin); and Second Division Award 3894 (Daughterty).

The Board is sympathetic with Claimant's position. In view of his long service (almost 35 years) with an apparently good record dismissal seems a harsh penalty even for a serious offense such as that involved here. Had the Board been in the position of the Carrier's Official it might have meted out a less severe penalty. Nevertheless under the record in this case since the issue of violation of the Agreement was not raised below, the Board's firm policy prevents a consideration of the matter at this stage.

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 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1962.