

Award No. 10928

Docket No. CL-13166

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

AUGUSTA UNION STATION COMPANY

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

(a) The Carrier violated the Agreement between the Parties when, on June 20, 1961 it dismissed Porter Willie Thompkins from its service;

(b) Porter Willie Thompkins shall now be restored to the Carrier's service with all employment rights unimpaired; and

(c) He be compensated for all loss sustained by reason of his dismissal.

OPINION OF BOARD: Claimant was employed as a Porter. His seniority date was May, 1929. On June 10, 1961 he was discharged because he was intoxicated while at work. An investigation held on June 14, 1961, shows that he was regularly assigned to work between the hours of 9:00 A. M. to 5:00 P. M. He was relieved from duty at 4:30 P. M. on that date.

The evidence is convincing that the Claimant was under the influence of alcoholic intoxicants. It is not necessary to secure medical evidence to establish that fact. Evidence by laymen is competent to make that determination. Awards 10355 (Harwood) and 10049 (Dugan). Dr. Mulligan's letter does not overcome the preponderance of evidence of intoxication.

The Board is committed to the rule that it will not interfere with disciplinary penalties unless the Carrier acted in bad faith, arbitrarily, capriciously or where the penalty was not commensurate with the equities of the case. This Board has not hesitated to modify the penalty where it was too severe. Awards 3066 (Youngdahl), 3358 (Tipton), 10696 (Levinson), 10697 (Levinson), and 10790 (Ray).

At the time of his discharge, the Claimant had 32 years of service with the Carrier. During that time he was disciplined once for intoxication. There is no evidence that the Claimant was an unwilling or poor

worker. The presumption is that he was a satisfactory employe. Even on the day of the offense, he was not discharged until 4:30 P. M., only 30 minutes before his quitting time. While the Board does not condone intoxication on the job, and considers the offense sufficiently serious to justify some discipline, it also believes that Claimant's dismissal from service is unreasonable and excessive. The Claimant has already been sufficiently punished by the penalty of about seventeen months of unpaid absence from his job.

On the basis of all the evidence the Board feels that the Claimant should be restored to service with all rights unimpaired but without monetary compensation for time lost.

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 penalty of discharge was too severe.

AWARD

That the Claimant should be restored to service with all rights unimpaired but without compensation for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1962.