

Award No. 10929

Docket No. CL-13237

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

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

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5121) that:

(1) Carrier violated the current Clerks' Agreement when it arbitrarily and improperly dismissed Freight Handler W. J. McCoy without just cause and refused to grant further hearing when requested.

(2) Freight Handler W. J. McCoy be restored to service with all other rights unimpaired and his record cleared.

(3) W. J. McCoy shall now be reimbursed for all wage loss sustained on and after September 21, 1961, as a consequence of Carrier's actions.

OPINION OF BOARD: Claimant was employed as a Freight Handler. At the time of his discharge for intoxication on September 29, 1961 he had about one year and eight months of service with the Carrier. His seniority date was January 5, 1960.

There is no dispute about the facts. Claimant was under the influence of alcoholic intoxicants. This was firmly established by evidence of his co-workers, by a doctor's certification after a medical examination, including a blood test, and by the Claimant's own admission. The fact that the Claimant allegedly imbibed in alcoholic beverages during his lunch hour, away from his work premises is not, in itself, a sufficient defense, since he was obliged to and did report to work after his lunch period. It was then that his intoxicating condition was discovered.

The Organization's claim that the investigation of the discharge was not properly conducted is without merit. A reading of the entire record discloses no prejudicial error. The Claimant and his representatives were given every opportunity to present their case and they did so. It was not necessary for the physician, who examined the Claimant, to be present.

In view of the fact that the Claimant's term of service with the Carrier was of a short duration, the penalty of discharge was not harsh and excessive. Awards 10258 (Harwood), 8711 (Weston) and others.

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 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 20th day of November 1962.