Award No. 12254
Docket No. TE-14278

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (Eastern Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway Company, that:

1. The Carrier violated and continues to violate the Agreement when on or about January 10, 1962, it severely and arbitrarily disciplined Mr. E. L. King by removing him from the service of the Carrier.

2. The Carrier shall now reinstate Mr. E. L. King to his former position with seniority, vacation and all other rights intact and accordingly reimburse him for all wages lost from the date of his removal forward.

OPINION OF BOARD: This is a discipline case in which the facts are not in dispute. While working his assignment on January 4, 1962, Claimant, Mr. E. L. King, became ill, went home at 2:40 P. M., took four bromo-quinine tablets and washed them down with a glass of beer. He then returned to work, but the effect of the medication was to make him act and appear groggy. His work station was in the Ticket Agent's office and ticket purchasers could see that King was slumped over his desk. He was discharged for using intoxicants and conducting himself in a manner that was thought to bring discredit on the railroad.

King's service record shows approximately twenty-two years of satisfactory service. The Organization claims that the discipline imposed on King was harsh and out of all proportion to his offense, especially in view of his long and excellent service record.

The Carrier points to a reference in the transcript where the following colloquy took place:

"Q. Do you have a drinking problem, Mr. King?"

"A. No, not since Mr. Addy warned me, I haven't taken a drink since."

Carrier states that it was lenient with King in the past in connection with his drinking and did not include any mention of drinking in his service record.

If the Carrier's total evaluation of King's past performance seeks to weigh this isolated incident over against almost twenty-two years of satisfactory performance and then concludes that the present episode warrants his dismissal, then we think the penalty is harsh, excessive and unreasonable. It is well settled that the Board may exercise discretionary power to mitigate the discipline imposed under the circumstances of the instant case. See Award 11170.

On the facts in this case we think a thirty-day suspension would be more in keeping with the offense charged against the Claimant rather than a discharge.

The claim will be sustained accordingly, with no reparation for the first thirty days Claimant was out of service.

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 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 penalty of discharge was too severe.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1964.

DISSENT TO AWARD 12254, DOCKET TE-14278

Award 12254 is in error in fundamental particulars: First, it recites that the Claimant on the date involved went home, took four bromo-quinine tablets and a single glass of beer. It characterizes this as a fact "not in dispute" although the Carrier took the position throughout this case that the Claimant's condition on returning to the office was so bad as to preclude any such alleged consumption of a single glass of beer as being a factual basis for his condition.

Second, the Award here is based on the proposition that dismissal was unwarranted for an employe with twenty-two years of satisfactory service as shown by his service record. Supervisory Carrier witnesses at the hearing testified that the Claimant had in the past been talked to about his drinking, and warned that it had to be stopped. The Claimant even admitted this as evidenced by the quotation in the Award from the hearing transcript:

"Q. Do you have a drinking problem, Mr. King?"

"A. No, not since Mr. Addy warned me, I haven't taken a drink since."

The record also shows that the Claimant's drinking had in the past been handled with him on an informal conference basis, rather than formally, through preferring of charges and conducting a hearing which would have made it a matter of blemish on the Claimant's service record. This method was obviously in the Claimant's interest and to his benefit, yet this Award penalizes the Carrier for its considerate treatment, and regards this Rule G case as a first offense case, though the record establishes otherwise in the clearest of terms.

Even if this were a first offense, which it is not, drinking on duty is of serious enough consequence to justify dismissal from service, and this Referee should not have substituted his judgment for that of the Carrier as to the appropriate amount of discipline to be imposed.

For these reasons, we dissent.

D. S. Dugan
P. C. Carter
W. H. Castle
T. F. Strunck
G. C. White